APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 97-5011

WALTER ABRAHIM-YOURI, EMANUEL ARYEH, OURIEL ARYEH, MEHRDAD AZARMI, JALIL FARDANESH, DELTA GEOTECHNICAL CONSULTANTS, CLIFFORD F. GURNEY, DAVID LAYLIN, ODSIRAN METEOROLOGICAL SYSTEMS, INC., ROBERT L. RUTZ, JEAN BIJAN SAMIMY, M.D., CAROLYN D. SPATTA, UNIVERSITY OF NORTHERN COLORADO, RICHARD C. WILLSON, JR., DARA ZARGAR, LOCKWOOD GREEN INTERNATIONAL, INC., NOURIEL ARYEH, SAMUEL ARYEH, BAHMAN MAALIZADEH, ODSIRAN DATA SYSTEMS, INC., LINA Z. SAMIMY, M.D. and UNIVERSITY OF PITTSBURGH,

Plaintiffs-Appellants,

v.

THE UNITED STATES,

Defendant-Appellee.

December 4, 1997, Decided

PLAGER, Circuit Judge.

Plaintiffs-Appellants ("plaintiffs") appeal from a Court of Federal Claims decision, *Abrahim-Youri v. United States*, 36 Fed. Cl. 482 (1996), granting summary judgment to the United States. Plaintiffs filed suit for "just compensation" for an

alleged taking[1] of property that occurred when the United States ("Government") espoused[2] and settled their claims against the government of Iran. Because no compensable taking occurred, we affirm the Court of Federal Claims' decision.

BACKGROUND

On November 4, 1979, the American Embassy in Tehran, Iran was seized and American personnel were taken hostage. In response, President Carter signed Executive Orders blocking transfers of property of Iran, which had the effect of "freezing" billions of dollars of American-controlled Iranian assets.

The "hostage crisis" resulted subsequently in a wide variety of claims of U.S. nationals against Iran. On January 19, 1981, the United States and Iran entered into a series of agreements, including two declarations of the government of Algeria, the "General Declaration"[3] and the "Claims Settlement Declaration,"[4] negotiated as part of the ultimate resolution of

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[1] "Nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

[2] "A claim is espoused by the United States ... when the government of the United States, usually through diplomatic channels, makes it the subject of a formal claim for reparation to be paid to the United States by the government of the state responsible for the injury." Restatement (Second) of Foreign Relations Law of the United States § 211 cmt. b (1965).

[3] Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, 20 I.L.M. 223.

[4] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the

(continued...)

the hostage crisis. The agreements, known as the "Algiers Accords," provided for the release of the hostages, the return of assets to Iran, the termination of certain litigation against Iran in U.S. courts, and the establishment of the Iran-United States Claims Tribunal ("Tribunal") to resolve certain outstanding claims. The Algiers Accords, and the series of Executive Orders that implemented them, were challenged and subsequently upheld by the Supreme Court in *Dames & Moore v. Regan*, 453 U.S. 654, 69 L. Ed. 2d 918, 101 S. Ct. 2972 (1981). *See generally* Shlomo Cohen *et al.*, Notes, The Iranian Hostage Agreement Under International and United States Law, 81 Colum. L. Rev. 822 (1981).

Article II(1) of the Claims Settlement Declaration gave the Tribunal jurisdiction to hear all claims against either country brought by nationals of the other, arising "out of debts, contracts ..., expropriations or other measures affecting property rights," as well as certain government-to-government disputes. Claims of U.S. nationals of less than $250,000 ("small claims") were to be presented to the Tribunal by the United States Government. To ensure payment of Tribunal awards in favor of U.S. nationals, the General Declaration provided for an interest-bearing security account, initially funded with one billion dollars of Iranian assets, and thereafter to be maintained, through deposits by Iran, at a minimum balance of $500 million.

Over the next several years, the United States and Iran continued negotiations in an effort to resolve the small claims of U.S. nationals and certain claims of the United States. In

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[4](...continued)
Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, 20 I.L.M. 223, 230.

1985, Congress passed legislation giving the Foreign Claims Settlement Commission ("Commission") standby jurisdiction to adjudicate claims of U.S. nationals against Iran in the event that the two governments concluded a lump-sum settlement of claims.[5] As of August 1989, only 82 small claims had been decided, while over 2,200 small claims remained pending before the Tribunal.

On May 13, 1990, the United States and Iran reached an agreement to settle the small claims of the U.S. nationals, along with a separate claim of the United States, for a total of $105 million.[6] Claims of U.S. nationals involving $250,000 or more were unaffected by this agreement and remained pending at the Tribunal. In return for the payment of $105 million, the Settlement Agreement provided for espousal of the small claims by the United States, extinguishment of the small claims and the United States claim against Iran, transfer to Iran (by quitclaim) of all property interests underlying the small claims, and referral of the small claims to the Commission for final evaluation and determination of amount. On June 22, 1990, the Settlement Agreement became effective when the Tribunal accepted the agreement and issued an award on agreed terms. The State Department then transferred all of the small claims to the Commission for adjudication. The Government allocated $55 million of the settlement amount for its own claim, and $50 million for payment of the small claims referred to the Commission.

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[5] Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, Title V, 99 Stat. 405, 437 (1985) (codified at 50 U.S.C. § 1701 note (1994) ("Iran Claims Settlement")).

[6] Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38 ("Settlement Agreement").

Appendix A

The Commission concluded its adjudication of the small claims by February 1995. The proceedings held before the Commission were ex parte; Iran was not a party to the proceedings, but did provide numerous documents to the Commission. A total of 3,066 claims[7] were resolved, and 1,000 of the claims were upheld. The successful claimants received awards plus interest, measured from the date of Iran's wrongful act until June 22, 1990, the effective date of the Settlement Agreement. Interest was not awarded for the period after June 22, 1990. In all, the Commission entered awards with an aggregate total value of $41,570,936 in principal and $44,984,859 in interest. Consequently, the $50 million allocated for the small claims (together with the interest borne on that sum) was insufficient to pay the successful claimants the full amount of their interest awards. Each claimant received the full amount of the principal awarded by the Commission and approximately 34.5 percent of the interest computed by the Commission.

Plaintiffs' claims were among those upheld by the Commission. After the United States and Iran entered into the Settlement Agreement, plaintiffs filed suit in the Court of Federal Claims, taking the position that the action of the United States in espousing and settling their claims was a taking for which the Fifth Amendment requires just compensation. They seek the payment of interest on the judgment awarded by the Commission, both the balance of the amount computed by the

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[7] The Settlement Agreement included a number of claims that had not been pending before the Tribunal, such as those that had been filed with the State Department but not filed with the Tribunal due to an expired filing deadline. *Abrahim-Youri*, 36 Fed. Cl. at 484 n.7.

Commission and interest beyond the interest cutoff date of June 22, 1990.

The trial court evaluated plaintiffs' takings claims under the three-factor test enunciated by the Supreme Court in *Penn Central Transportation Co. v. New York*, 438 U.S. 104, 124, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). With regard to the investment-backed expectations factor, the court noted that "those who engage in international commerce do so in full awareness that the security of their enterprise is uniquely dependent on the maintenance of stability and good order in the relationships of the nations involved....[;] the potential for Government involvement in international commerce remains an ever-present fact of life for those who transact their business abroad." *Abrahim-Youri*, 36 Fed. Cl. at 486. The court charged plaintiffs with knowledge of this reality.

The court went on to consider the other two factors as well. The character of the Government's action -- the espousal -- was deemed to be consistent with the conduct of foreign relations by the President and with the circumstances of the case. *Id.* at 486-87. The third factor, the economic impact, was seen as resulting from the actions of Iran, rather than the United States, and the failure to obtain the full amount of the interest was not an extraordinary or unusual loss requiring governmental recompense. *Id.* at 487.

In light of this analysis, the trial court concluded that no compensable taking occurred and granted summary judgment to the United States. *Id.* at 487-88. This appeal followed.

Appendix A

DISCUSSION

On appeal, plaintiffs argue that the trial court's view of the case under its Penn Central analysis is flawed in several respects, but more to the point, argues plaintiffs, the Penn Central type analysis is wholly inapplicable. This, according to plaintiffs, is because the Government effected a "*per se*" taking of their property (i.e., their causes of action against Iran) by espousing and settling their claims, which were pending before the Tribunal, and the Court of Federal Claims therefore erred in applying the three-factor Penn Central analysis which applies to regulatory takings, not to "*per se*" takings.

Seen as a "*per se*" taking, that is, one in which the plaintiffs' property was actually seized and became the property of the Government, the outcome, according to plaintiffs, is dictated by a straightforward syllogism: "since the existence of the property, the government action effectuating the taking, and the underpayment were all uncontroverted, summary judgment should have been granted to plaintiffs on the liability issue."

It is true that there are important analytical differences that must be respected between a claim for a taking based on a regulatory imposition that constrains an owner's continuing use of property, and one that is based on an outright governmental seizure or occupation of private property. The former is referred to as a "regulatory" taking; the latter as a "physical" (sometimes "*per se*") taking. The Supreme Court has made it clear that these two different fact patterns call for two different analytical approaches. *Compare Penn Central*, 438 U.S. 104, 57 L. Ed. 2d 631, 98 S. Ct. 2646, with *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982). *See Hendler v. United States*, 952 F.2d

1364, 1371-74 (Fed. Cir. 1991) (discussing the differences in fact patterns and analyses).

We agree with plaintiffs that their property rights -- their choses in action against Iran -- were extinguished when the Government espoused and settled their claims. After the espousal by the United States, the choses in action were not simply regulated in some manner, but were terminated; plaintiffs no longer had claims against Iran, but instead had a claim against the fund to be allocated by the Commission. In that sense plaintiffs are correct that this fact pattern does not fit comfortably in the regulatory taking category, the category to which the Penn Central analysis traditionally applies.

To say that, however, does not say that plaintiffs' syllogism necessarily follows, or that the considerations identified by the trial court are not relevant to the proper outcome in the case.[8] Since the reemergence of Fifth Amendment takings law from its long Twentieth-century slumber, see *Hendler*, 952 F.2d at 1371-74, takings claims have come in a variety of forms arising from a variety of fact patterns, some of which fit less than comfortably into the regulatory or physical takings dichotomy. *See, e.g., Board of County Supervisors v. United States*, 48 F.3d 520 (Fed. Cir. 1995) (claiming inter alia, a taking of a developer's "proffers"); *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 75 F.3d 648 (Fed. Cir. 1996) (claiming, inter alia, that public's assertion of its alleged rights by the Government constituted a taking); *Longshore v. United States*, 77 F.3d 440

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[8] *See generally* Note, The U.S.-Iran Accords and the Taking Clause of the Fifth Amendment, 68 Va. L. Rev. 1537 (1982) (discussing various factors that may be relevant to deciding whether compensation is warranted).

(Fed. Cir.) (claiming that imposition of a fee for applying for a cellular radio license was a taking), *cert. denied*, 136 L. Ed. 2d 15, 117 S. Ct. 52 (1996).

In *Belk v. United States*, 858 F.2d 706 (Fed. Cir. 1988), plaintiffs were individuals who had been held hostage in the U.S. Embassy in Tehran, Iran.[9] The former hostages alleged that the Government took their property--their causes of action against Iran--by entering into the Algiers Accords with Iran, which extinguished their claims against Iran and secured their release from captivity. The court noted that "the President's action in implementing the Algiers Accords was primarily designed to benefit the hostages." *Id.* at 709. The court concluded that the Fifth Amendment did not require that compensation be paid the hostages because the hostages were the intended beneficiaries of the Government's action, although the action also incidentally benefited the American public. *Id.* at 709-10.

Plaintiffs here allege that a taking occurred, not when the Government entered into the Algiers Accords, but when the Government entered into the Settlement Agreement which espoused and settled their claims against Iran. As noted above, when the United States and Iran entered into the Settlement Agreement, approximately 2,200 small claims had been pending before the Tribunal for nine years, while only approximately eighty small claims had been settled. As a result of the Settlement Agreement, all of the small claims were referred to the Commission for evaluation. Each of the plaintiffs was paid in full the principal amount the Commission

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[9] Two of the 15 plaintiffs were wives of hostages.

determined as the value of the claim, plus a portion of the interest due on the claim.

In contrast to the claimants who had claims greater than $250,000, the Government represented the plaintiffs at the Tribunal, and negotiated a settlement with Iran for the small claimants on the best terms it could. Interestingly, "a great many" of the claims greater than $250,000 were also settled in an en bloc negotiated settlement. Lawrence W. Newman, A Personal History of Claims Arising Out of the Iranian Revolution, 27 N.Y.U.J. Int'l L. & Pol. 631, 643 (1995). Many claims are still pending before the Tribunal, and the remaining private claimants do not have the benefit of free representation by the Government. *See id.* at 644 ("The current pace in the Tribunal is slow. Hearings are few and far between and the Iranians appear to want things that way.").

Plaintiffs do not object to the valuation of their claims by the Commission. They argue that a taking occurred because the Settlement Agreement failed to provide for a complete payment of the interest on their claims. They argue that Belk is distinguishable because the small claimants were "profoundly discriminated against by the Settlement Agreement in comparison to the Large Claimants who, to this day, collect interest to the date of payment of their awards.... In sum the Settlement Agreement was a disaster for the Small Claimants, unless they prevail here."

We disagree with plaintiffs' assessment of the Settlement Agreement. The Settlement Agreement was entered into by the Government in an effort to resolve what had become a problem for the small claimants as well as for the Government, not to harm them or to gain a government benefit at their expense.

Where, as here, the private party is the particular intended beneficiary of the governmental activity, "fairness and justice" do not require that losses which may result from that activity "be borne by the public as a whole," even though the activity may also be intended incidentally to benefit the public. *Belk*, 858 F.2d at 709 (quoting *National Board of Young Men's Christian Ass'ns v. United States*, 395 U.S. 85, 92, 23 L. Ed. 2d 117, 89 S. Ct. 1511 (1969)). The fact that the Government also benefited from the Settlement Agreement (by settling a claim against Iran for $55 million) does not change the fact that the small claimants were substantially benefited as well.

Plaintiffs rely on *Meade v. United States*, 2 Ct. Cl. 224 (1866), *aff'd*, 76 U.S. (9 Wall.) 691, 19 L. Ed. 687 (1869), and *Gray v. United States*, 21 Ct. Cl. 340 (1886), for the proposition that extinguishment of a claim against a foreign government may be a compensable taking under the Fifth Amendment.[10] In *Meade*, plaintiff filed suit in the Court of Claims for an alleged taking by the United States of his claim against the government of Spain, which he alleged was espoused by the United States as part of the 1819 treaty between the United States and Spain. The court opined that extinguishment of a cause of action may be a compensable taking under the Fifth Amendment, but that Meade had no claim against the United States since under the treaty his exclusive remedy was before a special tribunal which had been set up to pay compensation for claims extinguished by the treaty. *Meade*, 2 Ct. Cl. at 275. The court held that, while in its opinion the tribunal erred in denying Meade's claim on the ground that his proof was insufficient, Meade had not appealed

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[10] The Government, in its response brief, did not favor us with its views regarding plaintiffs' reliance on these cases.

the tribunal's decision and the court had no power to reopen the matter. *Id.* at 263, 276-78.

Gray is a Court of Claims advisory opinion to Congress in one of the so-called "French Spoliation Cases," dealing with relations between the United States and the revolutionary French Government between the time of the execution of King Louis XVI and 1801. The opinion, reported at 21 Ct. Cl. 340, runs some sixty-five pages, in the course of which the court opined that "the citizen whose property is thus sacrificed for the safety and welfare of his country has his claim against that country; he has a right to compensation, which exists even if no remedy in the courts or elsewhere be given him." *Id.* at 392-93. At the end of the opinion the court noted, "we have been required not to investigate legal rights, based upon the doctrines and principles of the common law, but to inquire into and to report upon the ethical rights of a citizen against his Government; rights which are never enforceable except by the consent of the sovereign...." *Id.* at 406. No judgment or order as such was rendered.

Plaintiffs argue that the Court of Claims' statements in *Meade* and *Gray* apply in this case, and that the Tucker Act, 28 U.S.C.§ 1491(a)(1) (1994), now provides a remedy for these Fifth Amendment takings. We are not persuaded. For one, in neither *Meade* nor *Gray* were plaintiffs awarded a recovery. Thus the cited statements are dicta, and not binding law. For another, even if *Meade* and *Gray* correctly state propositions of law applicable to the circumstances of those cases at that time, the evolution of takings law in the last 100 years brings additional considerations to light.

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 120 L. Ed. 2d 798, 112 S. Ct. 2886 (1992), the Supreme

Court stated that the range of interests that qualify for protection as "property" under the Fifth Amendment are defined by existing rules or understandings that stem from an independent source such as state law. *Id.* at 1030. In that case the Court was considering the extent to which a regulatory imposition could prohibit development of the plaintiff's real estate. The Court held that background principles, there the state's basic nuisance law, defined the scope of the property right; if the reach of the regulation was coincident with the scope of the state's power to control nuisances, a power that inhered in all land titles, then no compensation would be due. *Id.*[11]

By like token, it does not strain *Lucas* beyond its intended purpose to recognize that a similar principle may apply to "property" that arises through consensual international transactions as it does to property interests created by domestic law. Certain sticks in the bundle of rights that are property are subject to constraint by government, as part of the bargain through which the citizen otherwise has the benefit of government enforcement of property rights. As the trial court correctly observed, those who engage in international commerce must be aware that international relations sometimes become strained, and that governments engage in a variety of activities designed to maintain a degree of international amity.

Here, though the choses in action were extinguished, the Government provided an alternative tailored to the circumstances which produced a result as favorable to plaintiffs as could reasonably be expected. Plaintiffs have not shown that

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[11] Cf. *Florida Rock Indus. v. United States*, 18 F.3d 1560, 1570-71 (Fed. Cir. 1994) (drawing the distinction between mere diminution resulting from shared participation in government action and compensable taking).

they sustained losses that were avoidable under the circumstances. Nor have they shown that those engaged in international transactions with Iran could not have anticipated the need for government intervention. A history of such interventions can been seen in *Meade* and *Gray*.[12] A compensable taking has not been established; the fact that plaintiffs are not satisfied with the settlement negotiated by the Government on their behalf does not entitle them to compensation by the United States.

CONCLUSION

Accordingly, we affirm the decision of the Court of Federal Claims.

CLEVENGER, Circuit Judge, joining the opinion of the court.

I join the opinion of the court. I write separately to emphasize the significance of this case, and to explain why I think the court's analysis and result is correct.

This case is significant in that it affords us the opportunity to recognize that the familiar *per se* taking and regulatory taking categories are not rigid, and that certain "*per se*" takings (i.e., those which involve a property owner being ousted from his property by government action--such as in this case) do not automatically result under the Fifth Amendment in compensation to the ousted property owner. In such instances,

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[12] See also *Chang v. United States*, 859 F.2d 893, 897 (Fed. Cir. 1988) (noting the foreseeability of government interference in international commerce); *767 Third Avenue Assoc. v. United States*, 48 F.3d 1575, 1580-81 (Fed. Cir. 1995) (same).

whether or not the taking will require compensation depends on consideration of factors which are more familiarly applied in the regulatory takings setting, where property owners who remain in possession of their property complain of devaluation of the property as a result of governmental action. The familiar factors assessed to determine if a regulatory taking is compensable in essence articulate a rule of reason which attempts to resolve the collision of private expectations and the public interests asserted in support of the regulation.

The situation presented by this case is not entirely new to us. For example, we have held that the owners of a banking institution cannot prevail with a Fifth Amendment *per se* takings claim based on the seizure of their bank by federal banking regulators in the course of exercising their statutory duties to ensure the viability of the banking system. *See California Hous. Sec., Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992). In that case, the actions of the federal government resulted in no less an occupation of the plaintiffs' property than occurred when the government stepped into the shoes of the plaintiffs in this case, occupying, by espousal, their claims against Iran. Our decision in *California Housing* turned on the lack of any conceivable expectation by the plaintiffs that their property would not be occupied in the event circumstances compelled the regulators to close the facility. The license to engage in domestic banking in effect was subject to the condition of potential occupation of the private property by the government. That situation, we noted, is a far remove from the facts in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982). In *Loretto*, the owner of a personal residence objected to installation by the government of cable television facilities on her property. For the Supreme Court, those facts invoked

> the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation.

Id. at 441. In my view, the plaintiffs in this case are also at a far remove from the plaintiff in *Loretto*, and can be viewed to have engaged in international commerce, here and in Iran, pursuant to an implied license. For the longest time, the Congress has regulated the participation by U.S. citizens in international commerce. The fundamental right to travel, necessary to find value in any form of international commerce, is subject to regulation, in peace time, as well as in times of war. The circumstances in which currency can be moved in international commerce is likewise regulated. I need not attempt to exhaust the list of factors related to international commerce on which there have been long-standing, and unchallenged, federal regulations.

When one ventures into international commerce, it is with the knowledge of the extent to which that marketplace is regulated, and with appreciation for the reasons which underlie such regulation, including the overriding need to enforce this nation's foreign policy. Indeed, many of the legal regulations pertaining to international commerce exist to benefit those who participate in that market. One who obtains, in the pursuit of international commerce, a claim against a foreign government knows that our government may deem it necessary to espouse that claim. In my view, the fact of espousal alone cannot prove the existence of a compensable taking. For that reason, the cause of the plaintiffs in this case must fail.

Just as the seizure of a failing bank may be deemed necessary to implement the safety of our banking system, espousal of one's claim may be necessary to effect the consistent application of valid governmental policies in the international arena. In each instance, the property owner has been ousted of its property, and the federal government has occupied that property for the benefit of the larger public. A *per se* taking has occurred, but the taking by espousal is not automatically compensable, because no rational international commerce plaintiff could unblushingly assert shock or surprise that its property was seized by espousal.

Some property interests carry with them the right to full use and complete enjoyment without any interference by occupation from the government. Implicit in that right is the expectation that if the government interferes by occupation, it will compensate. Ms. Loretto held such a property interest. Other property interests carry with them stated or implied conditions that less than full use and enjoyment is to be expected, and that governmental interference by occupation may or may not be compensable, depending on the circumstances of the governmental action. Even in international commerce, there surely are some property interests as to which the owner shares Ms. Loretto's expectations. The plaintiffs in this case, however, have made no attempt to demonstrate such expectations, beyond their bare assertion that every physical occupation must result in compensation. Furthermore, there may be instances in which the governmental interests in espousal are so weak, or otherwise in question, that an espoused plaintiff may successfully show, in a rule of reason analysis, entitlement to compensation. In this case, however, for the reasons articulated in the opinion of the Court of Federal Claims, and in the opinion of this court, the takings are not compensable.

APPENDIX B

UNITED STATES COURT OF FEDERAL CLAIMS

No. 95-299 C

WALTER ABRAHIM-YOURI, et al.,
Plaintiffs,

v.

THE UNITED STATES,
Defendant.

36 Fed. Cl. 482

September 18, 1996, Filed

WIESE, Judge.

Plaintiffs seek just compensation for an alleged taking of their property. The taking, they contend, was precipitated by a settlement agreement, executed between the United States and Iran, that resolved certain claims against Iran that were awaiting adjudication before a special claims tribunal. Plaintiffs' property interests were among those affected by this settlement agreement. Their contention is that the settlement agreement failed to secure the full amount of compensation due them from Iran for the property losses at issue. Plaintiffs see the claimed shortfall in compensation as a taking by the United States.

The case is now before the court on plaintiffs' motion for partial summary judgment and defendant's cross-motion for

full summary judgment.[1] The matter has been fully briefed and oral argument was heard on July 31, 1996. We now decide in defendant's favor.

FACTS

On January 19, 1981, the United States of America and the Islamic Republic of Iran each gave formal approval to two declarations, drawn up by the Government of Algeria, setting forth principles and procedures for resolving a breach in relations then existing between the two signatory nations. These declarations, known generally as the Algiers Accords, brought to an end the crisis that had arisen between the United States and Iran as a result of the seizure of the United States Embassy and property in Tehran in November 1979 and the detention of United States diplomatic personnel in Iran following that seizure.

Among other matters, the declarations provided for the creation of an international arbitral tribunal, the Iran-United States Claims Tribunal (the Tribunal), to hear all claims against either country brought by nationals of the other arising "out of debts, contracts . . . expropriations or other measures other arising "out of debts, contracts . . . expropriations or other

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[1] In an earlier round of this litigation, the court had before it plaintiffs' motion for class certification and defendant's partial motion to dismiss for lack of jurisdiction. Neither motion was granted. A ruling on the request for class certification was deferred to a later stage of the proceedings; the motion for partial dismissal was denied because it addressed issues not actually raised by the complaint.

measures affecting property rights."[2] Such claims, it was specified, were to be presented to the Tribunal "either by claimants themselves or, in the case of claims less than $250,000, by the government of such national."[3] In addition to hearing claims by nationals of either country, the Tribunal was vested with jurisdiction to hear claims of either country against the other "arising out of contractual arrangements between them for the purchase and sale of goods and services."[4]

In the discharge of these functions, the Tribunal was directed to "decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances."[5]

The Tribunal was intended to serve as the exclusive forum for the litigation of the claims over which it was given jurisdiction. Consistent with that purpose, the United States agreed "to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran . . . to nullify all attachments and judgments obtained therein, to prohibit all further litigation

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[2] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), January 19, 1981, art. II, 20 I.L.M. 223, 231 (1981).

[3] *Id.*

[4] *Id.*

[5] *Id.* art. V.

based on such claims, and to bring about the termination of such claims through binding arbitration."[6] Additionally, to insure payment of all Tribunal awards in favor of United States nationals, the Accords provided for the establishment of an interest-bearing security account, initially to be funded with one billion dollars of blocked Iranian assets and thereafter to be maintained, through renewal deposits by Iran, at a minimum balance of $500 million.

Pursuant to the Accords, on April 1, 1981, the United States Department of State issued a public notice informing persons with claims against Iran amounting to less than $250,000 ("the small claims") to register their claims with the Department. Plaintiffs were among those individuals who registered claims in response to this notice. Thereafter, the Department of State submitted the small claims to the Tribunal; by January 19, 1982, some 2,782 small claims had been filed there.

Over the next several years, the United States and Iran directed their efforts to resolving the small claims. As of August 1989, however, only 82 small claims had been decided while over 2,200 small claims remained pending before the Tribunal.

In due course, the United States and Iran reached an agreement to settle the small claims of the United States nationals *en bloc*, along with a separate claim of the United States, for a total of $ 105,000,000. (The claim of the United States involved loans that had been extended to Iran by the

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[6] Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), January 19, 1981, General Principles, P B, 20 I.L.M. at 224.

United States Agency for International Development (A.I.D.)).[7] Claims of United States nationals involving amounts of $250,000 or more were unaffected by the agreement and consequently remained at the Tribunal for determination.

In return for payment to the United States of the lump-sum amount of $105,000,000, the settlement agreement provided for espousal of the small claims by the United States,[8] extinguishment of the small claims and also the United States' claim against Iran, transfer to Iran (by quitclaim) of all property interests underlying the small claims, and referral of the small claims to the Foreign Claims Settlement Commission[9] for final

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[7] The settlement agreement included not only those small claims of United States nationals filed with the Tribunal, but also small claims submitted to the State Department, which had not been filed with the Tribunal because the filing deadline had expired. The agreement also covered small claims that claimants had withdrawn from the Tribunal and claims that the Tribunal had dismissed for lack of jurisdiction.

[8] The "espousal" of a claim of a United States national by the United States occurs "when the government of the United States, usually through diplomatic channels, makes it the subject of a formal claim for reparation to be paid to the United States by the government of the state responsible for the injury." Restatement (Second) Foreign Relations Law of the United States § 211 cmt.b (1965).

[9] The Foreign Claims Settlement Commission (formerly called the International Claims Commission) is an independent, adjudicatory body, responsible for deciding claims against foreign governments, referred for determination by Congress, that involve the expropriation of property belonging to the United States or its citizens. 22 U.S.C. §§ 1622, 1623 (1994). *See Dames & Moore v. Regan*, 453 U.S. 654, 680-81, 69 L. Ed. 2d 918, 101 S. Ct. 2972 (1981) (discussing history of Foreign Claims Settlement Commission).

(continued...)

evaluation and determination of amount. The agreement did not, however, specifically provide for allocation of the $105 million between the small claims and the Government's claim.

On June 22, 1990, the Tribunal ratified the settlement agreement and issued an award on agreed terms. Thus, on that date, the settlement agreement became effective. On June 28, 1990, the Department of State transferred all small claims to the Commission for adjudication. On July 12, 1990, the Department of State directed the Department of the Treasury to allocate $55 million of the settlement amount to the satisfaction of the United States' claim arising out of the A.I.D. loans and $50 million for payment of the small claims referred to the Commission.

The Commission concluded its adjudication of the small claims by February 1995. A total of 3,066 claims were resolved. Of that number, 1,000 were upheld. In contrast to the proceedings before the Tribunal, the determinations of the Commission were based almost entirely upon presentations made by the claimants; the Government of Iran was not a party to the proceedings before the Commission. However, pursuant to the terms of the Settlement Agreement, the Commission was able to obtain from Iran numerous documents relating to the small claims.

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[9](...continued)
In 1985, the Foreign Claims Settlement Commission was given standby jurisdiction to adjudicate claims of United States nationals against Iran in the event a lump-sum settlement of those claims were to be concluded. Title V, Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405, 437 (50 U.S.C. § 1701 note ("Iran Claims Settlement")).

The successful claimants received awards together with simple interest -- computed at approximately 10 percent -- measured from the date of the wrongful act giving rise to Iran's liability until June 22, 1990, the effective date of the settlement agreement. Interest was neither computed nor awarded for the period after June 22, 1990. In all, the Commission entered awards with an aggregate total value of $41,570,936.31 in principal and $44,984,859.31 in interest. Thus, the $50 million allocated for the satisfaction of the small claims was insufficient to pay the successful claimants the full amount of their interest award. (After payment of principal, the balance remaining, supplemented by interest earned on the settlement funds while on deposit, resulted in each claimant receiving approximately 34.5 percent of the interest amount the Commission had determined.)

Plaintiffs are among those whose claims were upheld by the Commission. Their suit here is premised on the view that the settlement agreement effected a taking of their claims against Iran; consequently, they contend that the value of those claims (as established by the Commission) must include interest measured from the date of expropriation -- the date of the wrongful act by Iran -- until the date payment is actually received. In short, they seek not only the balance of the interest that the Commission had determined but also interest beyond the Commission's interest cut-off date of June 22, 1990.

DISCUSSION

In *Armstrong v. United States*, 364 U.S. 40, 49, 4 L. Ed. 2d 1554, 80 S. Ct. 1563 (1960), the Supreme Court observed that the Fifth Amendment's guarantee that private property shall not be taken without the payment of just compensation "was designed to bar Government from forcing some people

alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Thus, the starting point for discussion here is whether the economic injury plaintiffs complain of -- the alleged insufficiency of the interest payments they received -- satisfies the requirements for a Fifth Amendment taking. In other words, is theirs a loss that in "all fairness and justice" ought to be shifted to the public rather than be shouldered by the plaintiffs alone?

Although there is no precise formula to rely on in determining the point at which Government interference with private property interests gives rise to a compensable taking, modern-day case law has adopted the use of a three-factor analysis in searching out an answer to the question. These factors, set forth in the Supreme Court's decision in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978), include: the extent to which the Government's action interferes with investment-backed expectations, the character of the Government's action, and the economic impact of the Government's action on the claimants. These considerations are examined below.

In assessing the reasonableness of investment-backed expectations, the question we ask is whether plaintiffs reasonably could have anticipated that their property interests might be adversely affected by Government action. Where such intrusion is foreseeable, the commitment of private resources to the creation of property interests is deemed to have been undertaken with that risk in mind; hence, the call for just compensation on grounds of fairness and justice is considerably diminished. *See, e.g., Connolly v. Pension Benefit Guaranty Corp. v. United States*, 475 U.S. 211, 227, 89 L. Ed. 2d 166, 106 S. Ct. 1018 (1986) ("Prudent employers . . . had more than

sufficient notice not only that pension plans were currently regulated, but also that withdrawal itself might trigger additional financial obligations.") and *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1006, 81 L. Ed. 2d 815, 104 S. Ct. 2862 (1984) ("Monsanto was on notice of the manner in which EPA was authorized to use and disclose any data turned over to it by an applicant for registration.").

Plaintiffs cannot lay claim to an investment-backed expectation free of the potential of Government involvement. Those who engage in international commerce do so in full awareness that the security of their enterprise is uniquely dependent on the maintenance of stability and good order in the relationships of the nations involved. Where those relationships become strained, the resulting frictions can adversely affect all subordinate interests since traditional remedies to the enforcement of rights may also have been rendered ineffectual. In that event, it is the hand of Government alone that can help restore the mutual amity upon which successful commerce depends. Since the observance of good order among nations can never be taken for granted, the potential for Government involvement in international commerce remains an ever-present fact of life for those who transact their business abroad. *Chang v. United States*, 859 F.2d 893, 897 (Fed. Cir. 1988). Plaintiffs are charged with knowledge of this reality.

Moving on to the next factor -- the character of the Government's actions -- we note at once that, in the conduct of foreign relations, the President has the indisputable power to take up and to settle the claims of American citizens against foreign states and nationals. *United States v. Pink*, 315 U.S. 203, 240, 86 L. Ed. 796, 62 S. Ct. 552 (Frankfurter, J., concurring). Elaborating on this theme, the court in *Shanghai*

Power Co. v. United States, 4 Cl. Ct. 237, 244 (1983), *aff'd without opinion*, 765 F.2d 159, *cert. denied*, 474 U.S. 909 (1985), explained:

> When tensions arise between our nation and another, those caught in the middle must rely upon the President to safeguard their lives and property to the greatest extent possible. This may mean that others who have claims against the foreign sovereign may be blocked from seeking to collect their debts so that international tensions will not be exacerbated. Yet, in times of emergency, it is frequently entirely fortuitous who will benefit and who will suffer from any such presidential action. The possibility that the President will intervene in this manner is properly recognized as both a shared benefit and a shared risk of those who trade and travel abroad. [footnote omitted].

The espousal of plaintiffs' claims, like the circumstances that generated the necessity for that action, are eventualities whose risks of occurrence plaintiffs are deemed to have assumed by virtue of their choice to engage in foreign commerce.

The last factor we consider is the economic impact of the Government's actions. As noted earlier, plaintiffs base their demand to just compensation on the premise that their claims for property losses were settled for an inadequate amount. They contend that, absent the settlement, their claims would have proceeded to an adjudication before the Tribunal and there -- the argument continues -- plaintiffs would have recovered the principal amount (which, in fact, they did

receive) as well as interest measured from the date of taking until the date payment was actually received.[10] (Of this latter amount, approximately 35 percent was recovered.)

There are two responses to plaintiffs' argument. First, and foremost, the argument relies on an erroneous comparison. The property losses that plaintiffs suffered were occasioned by Iran, not the United States. Hence, the question that needs to be asked is whether the settlement provided plaintiffs with any lesser amount than they could have recovered from Iran absent intervention on their behalf by the United States. Significantly, there is nothing in the record to suggest that plaintiffs would have fared as well, much less better, had they been forced to go it alone.

The other point to be made here is that plaintiffs' failure to obtain interest in the full amount claimed does not force upon them an extraordinary or unusual loss. To view the issue in another context, the rule has long prevailed that interest is

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[10] In the presentation of their case, plaintiffs make the argument that the settlement agreement amounted to a *per se* taking of their property. The argument reflects a misconception of law. A *per se* taking involves a displacement, by Government action, of the incidents of property ownership so complete in its character as to leave an owner without any possessory interests in the property. Examples include a permanent physical occupation of property by the Government, *see Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 441, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982) or a regulation that categorically prohibits all economically beneficial use of land thereby destroying its value for private ownership, *see Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1015, 120 L. Ed. 2d 798, 112 S. Ct. 2886 (1992). We encounter neither of such extremes in this case. Indeed, as the Supreme Court noted in *United States v. Sperry Corp.*, 493 U.S. 52, 62 n.9, 107 L. Ed. 2d 290, 110 S. Ct. 387 (1989), "it is artificial to view deductions of a percentage of a monetary award as physical appropriations of property." The same is true here.

not collectible on a debt due from the United States in the absence of an authorizing statute or contract term. Until the advent of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-614 (1994), this rule governed the allowance of contractor claims against the sovereign, *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 588, 91 L. Ed. 521, 67 S. Ct. 398 (1947); in other areas it remains the controlling rule. *See e.g., Getty Oil Co. v. United States*, 767 F.2d 886 (Fed. Cir. 1985). Evaluated in light of this background, the court sees no compelling reason to view the alleged shortfall in plaintiffs' interest recovery as a burden which, in fairness and justice, should be allocated to the public as a whole.

CONCLUSION

Having considered the factors pertinent to our inquiry, the court is left with the certain conclusion that the events that befell plaintiffs were part of the risks they assumed in choosing to do business abroad. Accordingly, no principle of justice would support allocation to the public of the losses plaintiffs have claimed. In short, there was no taking of plaintiffs' property.

Based on the foregoing, plaintiffs' motion for partial summary judgment is denied and defendant's cross-motion for summary judgment is granted. The Clerk is directed to enter judgment dismissing the complaint.

APPENDIX C

SETTLEMENT AGREEMENT IN CLAIMS OF LESS THAN $250,000, CASE NO. 86 AND CASE NO. B38[1]

This Settlement Agreement ("Agreement") is made this 13th day of May, 1990 by and between the United States and the Islamic Republic of Iran (both as defined in Article I hereinbelow).

Whereas, pursuant to the provisions of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims, dated January 19, 1981 ("Claims Settlement Declaration"), approximately 2800 Claims of less than $250,000 each and Case No. 86 have been filed by the United States on behalf of the Claimants with the Iran-United States Claims Tribunal ("the Tribunal");

Whereas, a number of the Claims of less than $250,000 filed with the Tribunal have already been adjudicated by the Tribunal, or settled or withdrawn by the parties, and a number are still pending before the Tribunal;

Whereas, the United States and the Islamic Republic of Iran desire to settle definitively, forever and with prejudice all disputes, differences, claims, counterclaims and matters outstanding or capable of arising in relation to the Claims of less than $250,000 and/or Case No. 86.

Whereas, the United States and the Islamic Republic of Iran also wish to settle definitively, forever and with prejudice all

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[1] Unofficial transcription prepared by the Foreign Claims Settlement Commission.

disputes, differences, claims and matters outstanding or capable of arising in relation to the claims filed in Case No. B38.

Now therefore, in consideration of, and under the terms, conditions, premises, covenants and other agreements contained herein, the United States and the Islamic Republic of Iran agree as follows:

Article I: Definitions

A. For the purposes of this Agreement, the term "the Claims of less than $250,000" means any and all of the claims of less than $250,000 each, which have been filed with the Tribunal by the United States on behalf of U.S. nationals, which claims are included in Cases Nos. 10001 through 12785, and which are still pending, whether or not recategorized as Official ("B") Claims by the Tribunal (such as claims contained in the cases currently numbered B76 and B77) and whether or not the amount of any of such claims is ultimately adjudicated to be more than $250,000. The United States and the Islamic Republic of Iran agree that claims of U.S. nationals for less than $250,000 which have been submitted to the United States Department of State but were not timely filed with the Tribunal, as well as claims of U.S. nationals for less than $250,000 which have been either withdrawn by the Claimants or dismissed by the Tribunal for lack of jurisdiction, shall be considered, for purposes of this Agreement, as Claims of less than $250,000. This term shall not include the claims in Cases 12129 and 12130, in which settlements have been concluded between the parties.

B. For the purposes of this Agreement, the term "the Claimants" means any and all of the natural or juridical persons

or other entities who have made the Claims of less than $250,000.

C. For the purposes of this Agreement, "the United States" means the Government of the United States Of America, any political subdivision of the United States, and any agency, instrumentality or entity controlled by the Government of the United States of America or any political subdivision thereof. The term "the United States" also includes any and all of the Claimants.

D. For the purposes of this Agreement, "the Islamic Republic of Iran" means the Government of the Islamic Republic of Iran any political subdivision of the Islamic Republic of Iran, and any agency, instrumentality or entity controlled by the Government of the Islamic Republic of Iran or any political subdivision thereof.

E. For the purposes of this Agreement, the terms "the Claims of less than $250,000," "the Claimants," "the United States" and "the Islamic Republic of Iran" wherever used in this Agreement, whether below or above this Article, shall exclusively have the meaning ascribed to each of them under this Article.

Article II: The Subject Matter

The scope and subject matter of this Agreement are:

(i) to settle, dismiss, and terminate definitively, forever and with prejudice all the disputes, differences, claims, counterclaims and matters directly or indirectly raised or capable of arising out of the relationships, contracts, transactions, occurrences, obligations, rights and interests

contained in, arising out of, or related to the Claims of less than $250,000, Case No. 86 and Case No. B38.

(ii) To quitclaim and transfer to the Islamic Republic of Iran property of the Claimants as specified in Article VII.

Article III: Settlement Amount

(i) In consideration of complete, full, final and definitive settlement, liquidation, discharge, and satisfaction of all the disputes, differences, claims, counterclaims and matters directly or indirectly raised or capable of arising out of the relationships, contracts, transactions, occurrences, obligations, rights and interests contained in or related "to the Claims of less than $250,000, Case No. 86 and Case No. B38, the Government of the United States shall be deemed to have espoused the Claims of less than $250,000 and the comprehensive lump sum amount of U.S. $105,000,000 (one hundred and five million United States dollars), hereinafter referred to as "the Settlement Amount," shall be paid to the Government of the United States out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981. It is agreed that the Notification to the Escrow Agent of the Award on Agreed Terms shall not be issued prior to July 15, 1990, but shall be issued thereafter in the normal course.

(ii) The Government of the United States hereby attests, represents, and acknowledges that the Settlement Amount is the such amount to be paid in consideration of complete, full final and definitive settlement, liquidation, discharge and satisfaction of the Claims of less than $250,000, Case No. 86 and Case No. B38, and that after the payment of the Settlement Amount, the

Islamic Republic of Iran (including all respondents in the Claims of less than $250,000) shall not have to pay any other amount and/or shall not have to make any other consideration to the United States or any person whether natural or juridical, in relation to the Claims of less than $250,000, Case No. 86, and Case No. B38.

(iii) The Government of the United States shall place the Settlement Amount in one or more interest bearing accounts pending distribution. The distribution of the Settlement Amount falls within the sole competence and responsibility of the Government of the United States and shall in no way engage the responsibility of the Islamic Republic of Iran or any Iranian natural or juridical person.

(iv) The United States Department of State shall refer the Claims of less than $250,000 to the Foreign Claims Settlement Commission, United States Department of Justice, for adjudication.

(v) In adjudicating such claims, the Foreign Claims Settlement Commission shall apply Tribunal precedent concerning both jurisdiction and the merits, and shall take into account all issues including counterclaims and liens. Notwithstanding any other on will adjudicate on the merits any claim, among those settled by this Agreement, which the claimant demonstrates to the Commission's satisfaction could have been properly pursued in any forum other than the Tribunal. The Commission shall also take into account, as appropriate, any transfers under Article VII of this Agreement, without in any manner entailing any liability for the Islamic Republic of Iran or for any respondents in Claims of less than $250,000.

Appendix C

Article IV: Submission to the Tribunal

This Agreement is to be jointly submitted to the Tribunal on or before May 17, 1990 for the issuance of the Award on Agreed Terms. If this Agreement is not submitted by such date, or within such additional time as the parties may agree, or if it is not approved by the Tribunal, then it shall automatically become null and void and the parties, without prejudicing their respective rights, will be placed in the same position as they were in prior to the date of this Settlement Agreement.

Article V: Termination of the Claims

(i) Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the United States shall cause, without delay, all proceedings against the Islamic Republic of Iran (including all respondents in the Claims of less than $250,000) in relation to the claims, counterclaims and matters related to the Claims of less than $250,000 and/or Case No. 86 and/or Case No. B38 in all courts, fora, or before any authority or administrative body to be definitely and with prejudice dismissed, withdrawn and terminated, and the United States shall be barred from instituting or continuing with any such proceedings (including interpretive disputes and official claims) before the Tribunal or any other forum authority or administrative body whatsoever, including but not limited to any court in the United States or the Islamic Republic of Iran. The foregoing shall not affect those proceedings which are envisioned by the United States in Article III (iv) and (v), and which Will not in any manner entail any liability for the Islamic Republic of Iran or for any respondents in Claims of less than $250,000.

(ii) Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the Islamic Republic of Iran shall cause, without delay, all proceedings against the United States in relation to the claims, counterclaims and matters related to the Claims of less than $250,000 and/or Case No. 86 and/or Case No. B38 in all courts, fora, or before any authority or administrative body to be definitively and with prejudice dismissed, withdrawn and terminated and the Islamic Republic of Iran shall be barred from instituting or continuing with any such proceedings (including interpretive disputes and official claims) before the Tribunal or any other forum, authority or administrative body whatsoever, including but not limited to any court in the United States or the Islamic Republic of Iran.

Article VI: Releases

(i) Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the United States shall release and forever and definitively discharge the Islamic Republic of Iran (including all respondents in the Claims of less than $250,000) from any and all claims, causes of action, rights, interests and demands, whether in rem or in personam, past, present or future, which have been raised, may in the future be raised or could have been raised in connection with disputes, differences, claims, counterclaims and matters stated in, related to, arising from, or capable of arising from the Claims of less than $250,000 and/or Case No. 86 and/or Case No. B38.

(ii) Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the Islamic Republic of Iran shall release and forever and definitively discharge the United States from

any and all claims, causes of action, rights, interests and demands, whether in rem or in personam, past, present or future, which have been raised in connection with disputes, differences, claims, counterclaims and matters stated in, related to, arising, or capable of arising from the Claims of less than $250,000 and/or Case No. 86 and/or Case No. B38.

Article VII: Transfer of Rights, Etc.

Upon the issuance of the Award on Agreed Terms, and contemplation of the payment of the Settlement Amount, all of the Claimants' tangible and intangible assets, rights, properties and real estate, of any kind, located in the Islamic Republic of Iran, asserted in the Claims of less than $250,000 and/or Case No. 86, shall be quitclaimed and transferred unconditionally, irrevocably and without any right to recourse, "as is and where is," to the Islamic Republic of Iran.

Article VIII: Waiver of Costs

Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, the United States and the Islamic Republic of Iran shall waive any and all claims for costs against each other (including attorneys' fees) arising out of or related to the arbitration prosecution or defense of the claims and counterclaims asserted before the Tribunal, Iranian courts, United States courts or elsewhere with respect to matters involved or which could be involved in the Claims of less than $250,000, Case No. 86 and/or Case No. B38.

Appendix C

Article IX: Delivery of Documents

(i) Within three months of receipt of a written request from the Islamic Republic of Iran, the United States agrees to furnish the Islamic Republic of Iran copies of any formal statements of claims submitted by U.S. nationals to the Foreign Claims Settlement Commission, including documentary evidence, as well as the Commission's decisions with respect to the validity and amounts of such claims. The Commission shall require, as a precondition to granting compensation to a claimant that the claimant furnish any original share certificates and title deeds in his possession concerning assets, rights and properties transferred to the Islamic Republic of Iran under Article VII above. Following the adjudication of each claim the United States shall furnish such documents to the Islamic Republic of Iran. Where a claimant is able, on justifiable grounds, to prove that the originals of such documents are not in his possession, the Commission shall require from him a notarized affidavit in which the claimant sets out reasons for not being in possession of the originals of the said documents, and waiving his rights thereto. In such cases, the United States shall furnish the Islamic Republic of Iran with submitted affidavits and copies of the documents at issue.

(ii) Within three months of receipt of a written request from the Government of the United States, and for a period up to three years following the issuance by the Tribunal of the Award on Agreed Terms, the Islamic Republic of Iran agrees to furnish to the Government of the United States available documents, information, evidence, and records, including details as to the ownership an value of property, rights and interests pertaining to any of the Claims of less than $250,000.

Article X: Property in the United States

At any time prior to adjudication by the Foreign Claims Settlement Commission, the interested parties to any of the Claims of less than $250,000 may reach agreements concerning the delivery to the Islamic Republic of Iran of tangible property located in the United States. To become effective, any such agreement must be submitted to, and approved by the Commission which shall upon approval authorize any payment due from the Settlement Amount Property shall be transferred to the Islamic Republic of Iran pursuant to such agreements in accordance with United States law.

Article XI: Effect on Other Cases

This Agreement is for the sole purpose of settling the dispute identified herein. Nothing in this Settlement Agreement shall be relied upon, or construed as relevant to, or affect in any way, any arguments the United States or the Islamic Republic of Iran have raised, or may raise, concerning the jurisdiction or the merits of other cases whether before the Tribunal or any other forum.

Article XII: Construction

For the purpose of construction and interpretation of this Settlement Agreement, the entire Agreement shall be read and construed as a whole without giving any specific effect to any article separately.

Article XIII: Self-Execution

Upon the issuance by the Tribunal of the Award on Agreed Terms, and in contemplation of the payment of the Settlement

Amount, the releases, dismissals, waivers, withdrawals, and transfers of property located in Iran, contained and referred to in this Settlement Agreement shall automatically become self-executing.

Article XIV: Empowerment

The representatives of the Islamic Republic of Iran and the United States hereby expressly declare that they are duly empowered to enter into and execute this Settlement Agreement.

Article XV: Equality of Texts

This Settlement Agreement has been written and signed in both the Persian and English languages and each text shall have the same and equal validity.

FOR THE ISLAMIC REPUBLIC OF IRAN	FOR THE UNITED STATES
BY: /S/ ALINOBARI	BY: /S/ TIMOTHY E. RAMISH
DATE: MAY 14, 1990	DATE: MAY 13, 1990

APPENDIX D

HALLIBURTON CORP. v. COMMISSIONER

No. 9797-86 (U.S. Tax Ct.)

DIRECT EXAMINATION OF
LLOYD N. CUTLER, ESQUIRE
April 4, 1989

Transcript at 641-42

CYNTHIA J. MATTSON:[1] And what effect, if any, did the judicial proceedings and attachments that commenced in 1979 against the frozen assets in the United States have in terms of the U.S. Executive's negotiating position for the release of the hostages?

LLOYD N. CUTLER: We debated a long time over whether or not to allow the suits and the attachments and the set-offs, all of which could have been prohibited under IEEPA.

The arguments in favor of allowing them were that the freeze order itself might be subject to successful legal challenge, particularly with respect to the bulk of the assets located in our branch banks abroad, and that if we permitted attachments and suits and set-offs, we would be adding a belt to suspenders, or the other way around, and we would increase the difficulty and ability of Iran to lay its hands on those assets.

On the other hand, we recognized that if we did that, and if a sufficient number of suits and attachments and

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[1] Counsel for the Commissioner of the Internal Revenue.

set-offs occurred, that we could not unilaterally lift the freeze under the Takings Clause, to provide some alternative remedy at the time that we took the action lifting the freeze. And we decided on balance, it was better to go ahead and add the belt to the suspenders, rather than sit there and block all actions.

MATTSON: In December --

CUTLER: We knew what we were doing. We knew we were substantially buttressing the position of American claimants, and at least creating an obligation on the part of the United States, if it wished to lift that freeze, to provide a satisfactory alternative method of compensation.

Transcript at 645-47

MATTSON: We know that the Ayatollah Khomeini set forth on September 12, 1980, a four-point proposal for the release of the hostages. They would release the hostages if the United States Government agreed to non-intervention in Iran; agreed to return the frozen assets; cancelled the claims of US nationals against Iran; and returned the Shah's assets.

We also know that this event marked the beginning of a very complicated settlement, that took place in January of 1981, that included not only the release of the hostages, but an avenue of economic recovery for US claimants.

My question is, Mr. Cutler, why didn't the United Executive simply release all $12 billion of Iran's frozen assets and cancel all of the claims against Iran?

CUTLER: Well, there were two essential reasons. The first was what you might call a legal reason, and that is that the United States constitutionally, in our judgement, could not do that without, at the same time, providing an alternative satisfactory method of just compensation.

And it was very difficult for use to explain that point to the Iranians, especially having to do it through the Algerians, because the Iranians do not have an American style constitution with anything resembling our Fifth Amendment.

The second reason was essentially a political reason, or reason of honor, if you would, that that would have been paying a ransom. That would have been to release all claims of American nationals in exchange for the return of the hostages.

MATTSON: Early in your testimony, you indicated, concerning the negotiations with Iran, possible outcomes of the Iran hostage crisis. Could you tell the Court what the potential outcomes of the crisis were?

CUTLER: I think it was clear, once the hostages were taken, that the resolution would have to take the form either of a settlement, either the release of the hostages followed by a settlement of various Iranian/US cross claims, or, if there were an impasse that continued too long, or if there were some harm done to the hostages, such as a trial, we would have used force to regain the force, even at the risk of the lives of some of the hostages. And that, as part of our use of force, we would have vested the Iranian assets as distinguished from freezing them. By vesting them, I mean, in effect confiscating them as enemy property, and making them the property of the United States, in

which case they would have been available for the payment of American claims.

Transcript at 655-56

CUTLER: . . . If your question is would the final solution have involved an honorable solution, including some procedure for taking care of the U.S. claimants, I think the answer to that was the information was publicly available that that would happen, whatever the final solution..

That is, whether you assume a successful negotiation, or war, or a rescue mission, or state of hostilities with Iran, whatever happened, those assets, once we put them in play, to borrow a phrase from a later time of takeovers, etcetera, those assets were going to be applied, in one way or another, to the payment of the claims.

THE COURT: Certainly not all of the assets? It didn't end up that all of the assets were.

CUTLER: Not all of the assets, that's certainly true.

THE COURT: Only a portion of them, perhaps.

THE WITNESS: Well, it may well be that the amount of valid claims is substantially below the value of the assets. That isn't clear yet.

DAVID HARVIN: It may be the other way around, correct?

CUTLER: It may be the other way around, but even then, there are available lawsuits to the extent the assets are insufficient to pay valid claims.

The United States Government, under the *Dames and Moore* case, and under the predecessor cases, the *Blanchette* case, which existed before-hand, had, has and will continue to have, an obligation to pay just compensation.

So whoever has a valid claim, let's say a claim adjudicated by the Iran/US Tribunal for $100 million which the Iranians don't pay, will have a just compensation claim against the Government of the United States. It's almost a lock lawsuit.

APPENDIX E

WALTER ABRAHIM-YOURI, ET AL.,	)	
Plaintiffs,	)	
v.	)	No. 95-299C
THE UNITED STATES,	)	(Judge Wiese)
Defendant.	)	

City of Washington)
) ss.
District of Columbia)

AFFIDAVIT OF LEWIS M. JOHNSON

Lewis M. Johnson, being duly sworn, hereby deposes and states as follows:

1. I am a member of the bar of this Court, and, along with counsel of record Mr. Truitt, represent plaintiffs in the captioned action.

2. I have analyzed each of the awards in reported cases of the Iran-United States Claims Tribunal published in volumes 1 through 27 of the Tribunal reporter, 1982 through 1991.

3. Of the reported awards, 124 large claims were adjudicated in favor of U.S. claimants.

4. Of the reported awards, 165 awards on agreed terms, in favor of U.S. claimants.

5. Of the reported awards, 102 large claims were adjudicated against U.S. claimants.

6. Thus, of the 226 large cases completed by adjudication, 55% were adjudicated in favor of the U.S. claimant. Fully 74% of U.S. large claim claimants received an award -- either by adjudication or on agreed terms.

7. Of the reported awards, 19 small claims were adjudicated in favor of U.S. claimants.

8. Of the reported awards, 71 awards on agreed terms, in favor of U.S. claimants, were entered in small claims.

9. Of the reported awards, 13 small claims were adjudicated against U.S. claimants.

10. Thus, of the 32 small claims completed by adjudication, 59% were adjudicated in favor of U.S. claimants. Fully 87% percent of small claimants received an award, whether on agreed terms or by adjudication.

11. Some notes about my methodology are in order:

a. In cases where there was a partial award for the U.S. claimant on liability, but the case was finally settled on agreed terms as to the amount, it was counted as an award for claimant.

b. Where one award was made for several cases, each of the cases adjudicated was counted.

c. Where one case had several claims, the case was counted as one case for claimant, if he prevailed on one or more claims.

Lewis M. Johnson

Subscribed and sworn before me
this 5th day of June, 1996

Yvette C. Walters
Notary Public

APPENDIX F

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
CLIFFORD F. GURNEY	}	Claim No. IR-1317
	}	Decision No. IR-1126
Against the Government of the	}	
Islamic Republic of Iran	}	

Counsel for Claimant: Lewis M. Johnson, Esq.
John A. Westberg, Esq.
Westberg & Johnson

Hearing on the record held on September 23, 1994

FINAL DECISION

This claim in the amended amount of $100,000.00 against the Government of the Islamic Republic of Iran ("the Iranian Government") is based upon financial losses related to the termination of the claimant's employment with the Embassy of Iran.

By Proposed Decision entered in this claim on March 22, 1993, the Commission found the claimant entitled to an award in the principal amount of $18,768.75, plus interest of $20,138.87, as a lump-sum retirement benefit which represented one month's salary for each of the 16.5 years that he had worked at the Iranian Embassy in Washington, D.C., prior to the termination

of his employment by the Embassy in September 1979. However, the Commission denied the remaining portion of his claim, in the amount of $18,200.00, which was based on the termination of his employment contract, because the record did not support his assertion that a discharged employee may continue to receive his salary until other suitable employment is found."

By a letter dated March 30, 1992, the claimant filed objection to the Proposed Decision. Thereafter, by letter dated July 19, 1993, claimant's attorneys filed a "Memorial in Opposition to Proposed Decision" directed solely to Section I, "Retirement Claim." However, the claimant has not objected to Section II, of Proposed Decision, "Termination of Contract Claim."

In his Memorial in Opposition, the claimant contends that his services to the Iranian Embassy were such that the Commission should find him entitled to compensation at the rate of three months' salary for each year of completed service. In support of this contention, the claimant has submitted two statements from the Embassy's last Chief of Mission under the former Iranian government, an affidavit from an immediate superior at the Embassy, and other affidavits from individuals who were familiar with the high quality of his work.

The Commission has carefully considered the claimant's submissions and has again reviewed the entire record in his claim. The Commission has also familiarized itself with Article 2 of the Iranian Civil Employment Act of 1967, as amended, *Majmuah'i Kamili Qavanini Istikhdami'i Kishvari (Complete* Compilation of the Civil Employment Laws], A. Tarazandeh, *comp.,* at 27, Tehran, 1983 [in Persian], which provided that during the period in question, the Ministry of

Foreign Affairs was subject to its own laws and regulations, regarding employment and retirement of its employees.

Further, the Commission notes that Article 85 of the Law on Employment of the Ministry of Foreign Affairs of 1973, as amended, at 551 in the above-cited source, provides as follows:

> The Ministry of Foreign Affairs shall prepare separate regulations concerning employment and retirement of the local employees of its foreign missions and shall put such regulations into force after being approved by the Organization of Civil Employment and Administrative Affairs and the Council of Ministers.

The Commission has been unable to locate any separate regulations regarding employment and retirement of the local employees of the Ministry of Foreign Affairs. However, the Commission notes that the claimant has not referred it to any other instance where a long-term local employee was granted a retirement benefit on the same basis as that which he seeks, or any other evidence or authority to support his claim for the benefit he seeks. Nonetheless, the Commission is persuaded that an increase in the amount of the award made in the Proposed Decision is warranted.

The affidavits of the former Ambassador and other colleagues of the claimant at the Embassy express the view that a long-term employee such as the claimant would normally have been entitled to a pension of two or three times his final monthly salary. However, the Commission's review of employment contracts of Iranian entities such as Iran National

Airlines ("Iran Air") and National Iranian Oil Company ("NIOC") suggests that, where provided for, the normal level of lump-sum severance or retirement payments was in the range of one month's salary for every year worked (Iran Air) to one and one-half month's salary for every year worked (NIOC). The Commission recognizes that a Chief of Mission would have had great latitude and discretion to grant retirement benefits to a long-term employee. However, it is also noteworthy that the Ambassador's statement was that "a payment of at least two *if not* three times his monthly salary for each year of service would have been in order." (Emphasis added.) In the absence of evidence that any other former long-term employee of the Embassy actually had received the equivalent of three times his or her monthly salary for each year of service, as a retirement benefit, the Commission therefore determines that the claimant is entitled to an award for unpaid retirement benefits equivalent to two months' salary for each year of service, or $37,537.50. Accordingly, claimant is entitled to a revised award in this amount, dating from September 27, 1979.

In accordance with Tribunal precedents, recognized principles of international law, and its decisions in previous claims programs, the Commission concludes that claimant is entitled to interest as part of the principal award made to him herein amounting to 10 percent simple interest per annum from September 27, 1979, to June 22, 1990, the effective date of the Settlement Agreement. Accordingly, claimant is also entitled herein to an award of interest of 107.3 percent of the principal award, or $40,277.74.

Appendix F

CONCLUSION

For the reasons stated in the foregoing, the Commission withdraws the award granted in the Proposed Decision, and instead enters the revised award set forth below, which will be certified to the Department of the Treasury for payment in accordance with section 501(b) of the Iran Claims Act. In all other respects, the Proposed Decision is affirmed. This constitutes the Commission's final determination in this claim.

AWARD

Claimant, CLIFFORD F. GURNEY, is entitled to an award in the principal amount of Thirty-Seven Thousand Five Hundred Thirty-Seven Dollars and Fifty Cents ($37,537.50), plus interest from September 27, 1979 to June 22, 1990, in the amount of Forty Thousand Two Hundred Seventy-Seven Dollars and Seventy-Four Cents ($40,277.74), for a total award of Seventy-Seven Thousand Eight Hundred Fifteen Dollars and Twenty-Four Cents ($77,815.24).

Dated at Washington, DC and
entered as the Final
Decision of the Commission

Frank H. Conway,
Commission

APPENDIX G

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
DARA ZARGAR	}	
LINA ZARGAR SAMIMY	}	Claim Nos. IR-2683
	}	IR-2684
Against the Government of the	}	Decision No. IR-2327
Islamic Republic of Iran	}	

Counsel for Claimant: John A. Westberg, Esquire
Westberg & Johnson

Oral Hearing held on September 22, 1994.

FINAL DECISION

These claims, in the amended aggregate amount of $498,000.00, against the Government of the Islamic Republic of Iran ("the Iranian Government"), based are base on the expropriation of claimants' real property located in Iran.

By Proposed Decision issued on July 27, 1994, the Commission granted each claimant a principal award of $90,000.00, together with interest of $27,425.00, for loss of a plot of land in Aghdassieh, Tehran, and an apartment building and surrounding land, also in Tehran, based respectively on findings that the plot in Aghdassieh was the subject of an uncompensated expropriation by the Government of Iran in 1979, and that the building and land was transferred to the

Iranian Government by operation of Article VII of the Settlement Agreement as of June 22, 1990.

By letter dated August 12, 1994, the claimants, through their attorney, objected to the valuation of the undeveloped land In Aghdassieh, and to the Commission's Findings with regard to the apartment building, and requested an oral hearing. A hearing, at which DARA ZARGAR and two witnesses were present, was held on September 22, 1994. By written submissions and oral arguments to the Commission, the claimants contend that the Commission's determination of the value of the Aghdassieh land is "in error". Claimants also contended that the Commission failed to consider Iran's liability with respect to the apartment building in terms of "other measures affecting property rights" during 1979-1980, and that the Commission failed to follow Tribunal precedent as to the correct rate of exchange in determining the value of the apartment building as of June 22, 1990.

DISCUSSION

A. Undeveloped Land

In their objection, claimants argue that the evidence they submitted in support of the valuation of this plot of undeveloped land establishes that the value of their land was "more than three times higher" than the amount determined in the Proposed Decision, because of its location in a prime residential area in the foothills of the Alborz mountains, which is adjacent to the Niavaran Palace. According to the claimants, the appraisal, which was made by a professional appraiser who prior to the Islamic Revolution was licensed by the Iranian Ministry of Justice, values the land, as of 1979, at the equivalent of $168,439.71. Alternatively, based on verbal

information said to have been obtained from various sources in Iran, they assert that the land was valued at the equivalent of $170,212.76 as of 1979. Claimants also assert that the process by which "actual market values" of land is determined in Iran, "can be confusing" and therefore, the Commission should also take into account the affidavit by an individual who was an "experienced, official accountant in Iran", who explains the different processes, and shows that the "actual market value" of land "in most cases is substantially higher than the appraised values of official appraisers".

The Commission has reviewed the record as supplemented, including the affidavits, testimony from the appraiser and accountant and other additional evidence and information submitted before and during the hearing. Based on the evidence, the Commission is persuaded that an increase in the amount of the awards made in the Proposed Decision for the undeveloped land is warranted. Based on all of the evidence and information submitted by the claimants, and taking into consideration the official appraisals, testimony, size and other characteristics of the parcel of land, and having compared the Aghdassieh land with similar properties for which values have been determined in other claims, the Commission now finds that the fair market value of the parcel of undeveloped land in Aghdassieh, Tehran, which covered an area of 1,250 square meters, was $100,000.00 at the time of loss. Accordingly, each claimant is entitled to one-half of this amount, or $50,000.00, dating from July 2, 1979.

B. Apartment Building

Claimants' contend that since the Commission has not found the apartment building, and surrounding land to have been expropriated as of January 19, 1981, then it must find that

their property was subject to "other measures affecting property rights" during the period from 1979 through 1980. Claimants argue that although these "other measures" were to a "lesser degree" than an actual expropriation, they still interfered with their use and enjoyment of the property and thus, affected their property rights, within the meaning of the Algiers Accords. According to the claimants, these "other measures" included anti-American acts in 1979 which caused hostility towards Americans; the assault on the American Embassy in Tehran on February 14, 1979, and the holding of 101 hostages for a brief period; the assault on the Embassy on November 4, 1979, followed by the holding of the 50 Americans for 444 days; the adoption and commencement in 1979 of an official policy of persecution of Jews and Bahais; and the adoption of certain laws and regulations in Iran in 1979, which prevented any significant business transactions, specifically transactions having a value of more than 1,000,000 Rials. Claimants' contention is that these actions establish beyond question that in 1979, the claimants were prevented from returning to Iran to dispose of their properties, and that they need only show that these measures interfered with their use and enjoyment of their property. Claimants also contend that their situation is analogous to the "well founded fear of persecution" test used by the Board of Immigration Appeals in asylum cases, and that although asylum cases are different from claims before the Commission, the evidence seen in the claims of the Elghanayan and the Aryeh families is clear evidence of an "official Iranian bias against Jews", and is therefore a bias against the claimants, who are also Jewish.

In support of this portion of their objection, claimants have also referred to three cases where the Tribunal has either defined or discussed "other measures affecting property

rights".[1] However, the Commission notes that in all three of these cases, the acts of interference discussed were actions taken by the Iranian Government and directed specifically against the particular claimants and their property. In *Eastman Kodak,* the Tribunal held that the Iranian Government's interference with the claimant's subsidiary did not rise to the level of expropriation, but held that there was specific interference which caused damage to the claimant and constituted "other measures affecting property rights". *In Foremost,* the Tribunal found that the suspension of payment of profits and dividends to foreign shareholders, which was directed specifically against the claimant, was an interference with the claimant's rights which resulted in a deprivation and thus crave rise co a compensable claim. The Tribunal, in discussing "other measures" in *Tippetts,* stated that the effect of the measures against the owner is more important than the form of the measures, and the deprivation caused by the interference has to be more than merely ephemeral".

In the present case, the claimants have argued that the actions and events they have cited constituted "other measures" which interfered with their use and enjoyment of their property. However, claimants have not pointed to any specific instance in which an Iranian Government official or agency took any measure against them which interfered with their use and enjoyment, or prevented them from disposing of their property, thus causing them damage. In fact, in an earlier statement to

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[1] *Eastman Kodak Company, et al. v. The Government of Iran,*' Award No. 329-227/12384-3 (Partial Award, 1987), Award No. 514-227-3 (1989); *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran,*' Award No. 141-7-2 (1984); *Foremost Tehran, Inc. v. The Government of the Islamic Republic of Iran,*' Award No. 220-37/231-1 (1986).

the Department of State, DARA ZARGAR stated that the two tenants in their building, continued paying rent until early 1980, and the reason why they ceased doing so thereafter is nowhere stated or reflected in the record.

In summary, therefore, although the Commission has carefully reviewed the claimants' arguments, statements and various other documents and materials submitted in support of their claim, it is not persuaded that, as of January 19, 1981, claimants had been deprived of the use and enjoyment of their apartment building by the Iranian Government, either through expropriation or other taking or as a result of "other measures affecting property rights," so as to give rise to a compensable claim under the Algiers Accords, Settlement Agreement, and the relevant precedent decisions of the Tribunal. The Commission is well aware of the intense anti-American conditions that existed in Iran in 1979, and the injuries to -- Americans and losses of their property which occurred as a result, and is also aware that the Iranian government committed numerous violations of the Treaty of Amity, specifically in connection with the seizure of the United States Embassy in Tehran in November 1979. However, the Tribunal has expressly held that the creation or existence of those hostile conditions was not sufficient in itself to serve as a basis for finding, the Iranian Government responsible for a claimant's losses in Iran. *Alfred L. W. Short v. The Islamic Republic of Iran, Award No. 312-11135-3 (1987); Jack Rankin v. The Islamic Republic of Iran,* Award No. 326-10913-2 (1987). Rather, a claimant must establish that a specific, intentional pronouncement, action, or omission of the former or present Iranian government caused or could reasonably be expected to have caused the claimed loss. *Id.*

Furthermore, the Commission is aware that approximately thirty thousand Jews still reside in Iran, and are allowed to practice their religion.[2] In addition, Jewish candidates participate in the election process and Jews are represented, in proportion to their numbers as a religious 'minority,' in the Majlis, Iran's unicameral parliament.[3]

Accordingly, the Commission determines that its denial of the claimants' claim for compensation based on the expropriation or other taking of their apartment building by the Iranian Government before January 19, 1981, or as a result of "other measures affecting property rights" directed against them by that government prior to January 19, 1981, must be and it is hereby affirmed.

With regard to the valuation of the apartment building, claimants contend that although the Commission determined that they were entitled to awards for the loss of the property under Article VII of the Settlement Agreement, the Commission erred in using the free market exchange rate, as opposed to the official market rate published by the Central Bank of Iran. Claimants argue that the Commission is required to follow Tribunal precedent and cite as authority *Starrett Housing Corporation v. The Islamic Republic of* Iran, Award No. 314-24-1 (1987), where the Tribunal determined that unless a different rate was agreed upon between parties, the official exchange rate should be used "in the normal course of events" where the claimant would "have repatriated the funds

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[2] See Article 13 of the Iranian Constitution which lists Jews as a recognized religious minority group.

[3] Robin Wright, *A Reporter At Large A Teheran Spring*, The New Yorker, June 22, 1992.

if they had been received on the date they were due." The claimants also cite *McCullough & Company, Inc. v. The Ministry of Post, Telegraph and Telephone, et al.* Award No. 225-89-3 (1986), where the Tribunal used the official exchange rate and held that "it would be inequitable to oblige the claimant . . . to suffer the full extent of such depreciation when the payments it should have received were delayed as a consequence of breaches of contract by the Respondents."

The Commission has reviewed the record as supplemented, including the arguments put forth at the oral hearing. However, as to the claimants' argument concerning the applicable exchange rate, the Commission notes that the Tribunal has never decided a claim involving expropriation of property after January 19, 1981, or any other type of claim that arose after January 19, 1981. In addition, the Tribunal decisions cited by the claimants involve commercial contracts, under which payment by the Iranian entity based on an expected or foreseeable exchange rate was held to be part of the agreement between the parties when the contracts were signed. In contrast, in determining the value of real property, the essential consideration is the property's actual, *i.e.*, fair market value at the time of the loss, in this case June 22, 1990. Had the claimants sold their apartment building at that time, the price would have reflected the value of the property, whether in terms of rials or some other currency, as compared with the value of other goods or services that could have been purchased with that amount of rials or other currency. To disregard this basic economic reality would be to place a wholly artificial value on the claimants' property.

Claimants also contend that their argument is supported by the fact that the Iranian Government has continued to use the official rate of exchange in charging, fees for visas and other

official documents and services. However, the charges which that government assesses for such services, whether in rials or some other currency, is strictly a domestic matter, reflecting what it considers to be their value or their actual cost, or some portion thereof.

Nevertheless, based on a review of all the evidence, including the testimony by Mr. Zargar and other witnesses, and taking into consideration the size of the apartment building and its location in Hassanabad, Tehran, the Commission is persuaded that an increase in the valuation of this property is also warranted. Accordingly, the Commission now finds that the claimants' three-story apartment building and underlying and surrounding land, consisting of a total of 717 square meters, had a value of approximately 420,000,000 rials as of June 22, 1990, and that this value was equivalent to $288,000.00, based on the then-prevailing market conversion rate between the rial and the United States dollar. Accordingly, each claimant is entitled to one-half of this amount, or $144,000.00.

In summary therefore, each claimant is entitled herein to a total principal award of $194,000.00.

In accordance with Tribunal precedents, recognized principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimants are entitled to interest as part of their awards for the undeveloped land in Aghdassieh, amounting to 10 percent simple interest per annum from July 2, 1979 to June 22, 1990, the effective date of the Settlement Agreement. Accordingly, each claimant is also entitled herein to an award of interest of 109.7 percent of his or her principal award, or $54,850.00.

However, with regard to the apartment building and surrounding land, the date of the loss has been established as the effective date of the Settlement Agreement. Therefore, claimants are not entitled to interest as part of the awards in this portion of their claims. *See Claim of LYLE L. TOWNSEND Against the Government of the Islamic Republic of Iran,* Claim No. IR-0918, Decision No. IR-0146 (1992).

CONCLUSION

For the reasons stated in the foregoing paragraphs, the Commission withdraws the previous awards set forth in the Proposed Decision, and instead enters revised awards as set forth below. These awards will be certified to the Secretary of the Treasury for payment in accordance with subsection 501(b) of the Iran Claims Act. In all other respects, the Proposed Decision is affirmed. This constitutes the Commission's final determination in these claims.

AWARDS

Claimant, DARA ZARGAR, is entitled to an award in the principal amount of One Hundred Ninety-Four Thousand Dollars ($194,000.00), plus interest on $50,000.00 from July 2, 1979, to June 22, 1990, in the amount of Fifty-Four Thousand Eight Hundred Fifty Dollars ($54,850.00), for a total award of Two Hundred Forty-Eight Thousand Eight Hundred Fifty Dollars ($248,850.00).

Claimant, LINA ZARGAR SAMIMY, is entitled to an award in the principal amount of One Hundred Ninety-Four Thousand Dollars ($194,000.00), plus interest on $50,000.00 from July 2, 1979, to June 22, 1990, in the amount of Fifty-Four Thousand Eight Hundred Fifty Dollars

($54,850.00), for a total award of Two Hundred Forty-Eight Thousand Eight Hundred Fifty Dollars ($248,850.00).

Dated at Washington, DC and entered as the Final Decision of the Commission.

Delissa A. Ridgway
Chair

Benjamin F. Marsh
Commissioner

Frank H. Conway
Commissioner

APPENDIX H

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
MEHRDAD AZARMI	}	Claim No. IR-3204
	}	
Against the Government of the Islamic Republic of Iran	}	Decision No. IR-2356

Counsel for Claimant: John A. Westberg, Esq.
Westberg & Johnson

FINAL DECISION

This claim in the amended amount of $249,999.99 against the Government of the Islamic Republic of Iran ("the Iranian Government") is based on the alleged expropriation of the claimant's real properties in Iran.

By Proposed Decision issued on August 24, 1994, the Commission denied claimant's claim, based on its determination that the claimant was not a national of the United States at the time his properties were allegedly confiscated.

By letter dated August 31, 1994, the claimant objected to the Commission's Proposed Decision and requested an oral hearing. An oral hearing was scheduled for October 25, 1994 but was continued at the request of the claimant's attorneys. Subsequently, the oral hearing was rescheduled for and held on December 12, 1994.

Appendix H

In submissions and testimony at the oral hearing, the claimant stated that he had been under the mistaken belief that he had left Iran in 1978 whereas an examination of his passport verified that in fact he had left Iran in February 1979. As a result, his assertion that his properties were confiscated in 1979 was similarly incorrect. He testified that his property located in the Mirdamad area of Tehran had been occupied as of December 1980 by someone whom he believed to be connected with the Iranian Government entity the "Foundation for the Oppressed." In support of this assertion, the claimant submitted affidavits by three neighbors in Tehran, who averred that they each recalled an individual occupying the claimant's residence as of December 22, 1980. The individual who had obtained the affidavits from the affiants was present at the hearing and he testified as to his conversations with the affiants regarding, their recollections.

The claimant, through his attorneys, contended that the Commission should not require a claimant to point to a specific act or statement by the Government of Iran to establish that he has been denied access to his property. The claimant further argued that the Commission should hold the Iranian Government liable for his losses on the basis of "other measures affecting, property rights," or that he should be found entitled to compensation on the ground that his property rights were transferred to the Iranian Government under Article VII of the June 22, 1990 claims settlement agreement between the United States and Iran (the "Settlement Agreement").

Appendix H

DISCUSSION

I. Jurisdiction - Dominant and Effective Nationality

The record reflects that the claimant was born in Iran, immigrated to the United States, and became a naturalized citizen in 1980. Accordingly, the claimant is a dual national of Iran and the United States.

Before jurisdiction may be assumed over the claim of a dual national, the claimant must establish that his or her dominant and effective nationality during the relevant period from the date the claim arose until January 19, 1981 was that of the United States. *Reza Said Malek v. the Government of Iran, Award No. ITL 68-193-3 (1988).* The determination of dominant and effective nationality requires consideration of "all relevant factors, including habitual residence, center of interests, family ties, participation in public Life and other evidence of attachment." *Zaman Azar Nourafchan v. The Islamic Republic of Iran,* Award No. ITL 75-412-3 p. 5 (1989) *citing Case No. A18,* Decision 32-A18-FT p. 25 (1984). The test is whether in the period preceding, contemporaneous with and following the claimant's naturalization as a United States citizen, his factual connection with the United States was greater than with Iran during the same period. *See Nasser Esphahanian v. The Islamic Republic of Iran,* Award No. 31-157-2 (1983) (citing, Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. 4).

Based on the evidence in the record, the Commission finds that the claimant's dominant and effective nationality was at all times that of the United States. *See, George Nourafchan v. The Islamic Republic of Iran,* Award No. ITL 75-415-3, p. 11 (1989); *Claim of MANUCHER LOUIS and JOYCE LOUIS*

Against the Islamic Republic of Iran, Claim No. IR-3172, Decision No. IR-0903 (1993).

II. Merits

A. Three-Story Building in Mirdamad/Davoodieh

The claimant has submitted evidence establishing that he owned a 2½ story building erected on 103 square meters of land in north Tehran. According to the copy of the deed submitted by the claimant, as well as claimant's own testimony, the property was mortgaged to Bank Meill for 5,680,000 Rials for a term of sixteen years from June 13, 1977. At the hearing, testimony was offered that the original principal amount of the mortgage was only 2,500,000 Rials of which 2,312,912 Rials remained unpaid in December 1980.

The Commission has reviewed the record as supplemented, including the affidavits and the testimony by the claimant, his witness and his appraiser. Based on the evidence, the Commission is persuaded that someone connected with the Foundation for the Oppressed took possession of the property in question as of December 22, 1980.

Accordingly, the Commission finds that the claimant's property was the subject of an uncompensated expropriation by the Iranian Government on or about December 22, 1980. Claimant is therefore entitled to an award to compensate him for the loss of his property located at Mirdamad from that date.

As regards valuation, the Commission has carefully reviewed all of the evidence and information submitted by the claimant. Taking into consideration the appraisals, claimant's own testimony, and the size and other characteristics of the

property, and having compared this property with similar properties for which values have been determined in other claims, the Commission Finds that claimant's equity interest in the Mirdamad property was $100,000.00 at the time of loss. Accordingly, the claimant is entitled to an award in that amount, dating from December 22, 1980.[1]

In accordance with precedents of the Iran-United States Claims Tribunal, recognized principles of international law, and its decisions in previous claims programs, the Commission further concludes that claimant is entitled to interest as part of his award, amounting to 10 percent simple interest per annum from December 22, 1980 to June 22, 1990, the effective date of the Settlement Agreement. Accordingly, claimant is also entitled herein to an award of interest of 94.9 percent of his principal award, or $94,900.00.

B. Condominium at Shahrake-Gharb

The evidence in the record indicates that, on or about November 1, 1976, the claimant signed a contract for the purchase of a condominium with the Omran Techlar Construction Co. Ltd. ("Omran"). The apartment, which had a purchase price of 8,764,000 Rials, was to be completed by September 30, 1978. According to the claimant, he paid a total of 3,856,160 Rials towards the purchase price; the remaining 4,907,840 Rials was payable over an eight-year period upon delivery of the apartment to the claimant. The claimant argues

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[1] The Commission also notes, however, that although the claimant has been found entitled to an award, he will not receive payment unless he submits an affidavit explaining why the original deed is no longer in his possession and that he waives any rights to such property. This document will be transmitted to the Government of Iran.

that, as a result of Iran's confiscation of his properties, the condominium was not transferred to him when it was ready. Therefore, he seeks the appraised value of the condominium as of December 1980, less any amounts that he owed thereon. He also seeks penalty payments for late delivery of the condominium for a three year period.

Although the Commission has determined, *supra,* that the Iranian Government through its physical occupation is liable for the confiscation of claimant's Mirdamad property, the claimant has not provided any documentary evidence that Iran took steps to confiscate any other property of the claimant prior to January 19, 1981. The Commission notes that, in his affidavit dated September 21, 1994, the claimant's witness stated that the apartment "was supposed to be handed over on September 29, 1978," but that it "was completed with 3 years' delay, *i.e.,* [sic] in the year 1981...". In a sheet of calculations handed to the Commissioners on the day of the hearing, the claimant has calculated the late payment penalty due him for a period of three years, presumably from September 1978 through September 1981. Based on this evidence, the Commission could assume that the claimant himself did not consider the apartment to have been ready until September 1981.

At the hearing, claimant's witness also testified that, sometime in 1992, he had visited Omran's offices to discuss the disposition of the apartment. According to his testimony, he was informed that Omran had received an order from the Revolutionary Government not to transfer the apartment and those of others to the owners when they were finished because "this apartment belongs to the Government." At this point, claimant's attorney elicited testimony that the witness was referring to the Foundation for the Oppressed. According to the

witness, Omran's representative stated that the order had been received in late 1980 and 1981. The witness also testified that he had alone to the revolutionary court to see a judge with whom he had prior dealings. He stated that he wanted to obtain a copy of the judgment confiscating claimant's properties but was told that he could not. The witness testified that he was told that claimant's properties were confiscated "because of his religion and his connection with the Ministry of Culture. " It was his testimony that the date of such judgment was after 1981 and 1982 but that the Prosecutor's order would have been earlier; that it took a period of two years for an order to mature into a judgment. At the hearing, claimant's witness also stated that according to his investigation, when the condominium was completed, "in 1981," the builder could not transfer title to the claimant because of a Government order confiscating claimant's properties. No other evidence was submitted in this regard.[2]

On the taking issue, claimant contends that the Iranian Government is liable for his loss by subjecting his interests to "other measures affecting, property rights" in the three-month period between his naturalization and January 19, 1981. Claimant argues that "proof of actual taking is not required," but rather that a claimant "need only establish that Iran has taken action that has unduly delayed his effective enjoyment of those properties, or deprived him of control of his properties for an extended period of time, or unreasonably interfered with the

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[2] In order to come within the jurisdictional cut-off date established by the Algiers Accords and relevant Tribunal precedents, the condominium would have been completed in the first nineteenth days of 1981. The claimant has not sought to argue that this was the case, and there is nothing in the record which would justify such a presumption.

use, enjoyment, or disposal of the properties for more than a reasonable period of time."

Claimant has also referred in his objection to three cases in which tile Tribunal has either defined or discussed "other measures affecting property rights."[3] However, in all three of these cases, the acts of interference discussed were actions taken by the Iranian Government and directed specifically against the particular claimants and their property. In *Eastinan Kodak,* the Tribunal held that the Iranian Government's interference with the claimant's subsidiary did not rise to the level of expropriation, but that there was specific interference which caused damage to the claimant and constituted other measures affecting property rights." In *Foremost,* the Tribunal found that the suspension of payment of profits and dividends to foreign shareholders, which was directed specifically against the claimant, was an interference with the claimant's rights which resulted in a deprivation and thus gave rise to a compensable claim. In *Tippetts,* the Tribunal, in discussing "other measures," stated that the effect of the measures against the owner is more important than the form of the measures, but that the deprivation caused by the interference had to be more than "merely ephemeral." That case too involved a specific action taken by Iranian government authorities against the claimant's business operations.

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[3] *Eastman Kodak Company, et al. v. The Government of Iran,* Award No. 329-2271/12384-3 (Partial Award, 1987), Award No. 514-227-3 (1989); *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran,* Award No. 141-7-2 (1984); *Foremost Tehran, Inc. v. The Government of the Islamic Republic of Iran,* Award No. 220-37/231-1 (1986).

In the present case, the claimant has argued that the actions and events he has cited constituted "other measures" which interfered with his use and enjoyment of his interests in the property. In addition, he asserts that the fact that he is a member of the Bahal community is prima facie evidence of his vulnerability to persecution.[4] However, other than his witness's testimony, the claimant has not pointed to any specific instance in which an Iranian Government official or agency took any measure against him which interfered with his use and enjoyment, or prevented him from disposing of the property prior to January 19, 1981, thus causing him damage.

In summary, therefore, although the Commission has carefully reviewed the claimant's arguments, statements and various other documents and materials submitted in support of his claim, it is not persuaded that, as of January 19, 1981, claimant had been deprived of his financial interest in the contract for the condominium in question by acts attributable to the Government of Iran.

Accordingly, the Commission determines that the claimant's claim for compensation based on the expropriation or other taking of his interest in the condominium by the Iranian Government before January 19, 1981, or as the result of

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[4] This statement is based on a copy of a release submitted by the claimant, issued in May 1988 by the Department of State, Office of Asylum Affairs, Bureau of Human Rights and Humanitarian Affairs, which stated the view that Bahais, as a religious minority in Iran, "have a prima facie case for a well-founded fear of persecution in Khomeini's Iran." The Commission notes, however, that this statement was directed to the Department of Justice and specifically focused on asylum cases and "a well-founded fear of persecution within the meaning of the Immigration and Nationality Act, as amended."

"other measures affecting, property rights" directed against him by that Government before January 19, 1981, must be and it is hereby denied.

The claimant alternatively argues that, in the event that the Commission does not find that his "properties" were expropriated or subjected to other measures, it must find that they were automatically quitclaimed and transferred to Iran under Article VII of the Settlement Agreement as a matter of law on June 22, 1990.

With regard to the condominium located in Shahrake-Gharb, the Commission notes that the claimant has not established that he was the owner of any "property" that could have been the subject of an Article VII transfer. As the record indicates, the claimant had entered into a private contract for the purchase of an apartment and had paid a portion of the purchase price as a down payment. The Government of Iran was not a party to this contract. At the hearing, testimony was elicited that Omran was a private company. In response to this testimony, claimant's attorney contended that "this was not a claim against Omran" but rather "the information that we have is that interference by the government caused the property not to be transferred" and that "the government had caused the loss."

The Commission has already determined that insufficient evidence exists for a finding, of expropriation or for a finding that "other measures" deprived the claimant of a property right in the condominium on or before January 19, 1981. The Commission also notes, however, that interference with contractual relations is a tort, and as such, falls outside the jurisdiction of the Commission as defined by Article II of the Algiers Accords.

The question for the Commission, therefore, is what kind of a property right, if any, the claimant had in his contract with Omran as of the date of the Settlement Agreement and whether that right was of the type that could be transferred under that Settlement Agreement. The claimant did not elaborate on this point either in his memorial or at the hearing. At the hearing, the claimant was advised by the Commission's staff attorney that the "Commission could look at the sales agreement as having been breached in 1978." Yet no response or elaboration was presented in opposition to this view.

In "Claimant's Memorial in Support of Objections to Proposed Decision," the claimant merely refers to "his properties" as having been transferred. No evidence or legal argument was presented as to claimant's ownership rights to the condominium as of the time of the 1990 transfer. What is clear from the evidence, however, is that, regardless of the reason, the claimant was not the owner of the property in question, i.e., he was not in possession of the deed to the property, as required under Iranian law, as of the effective date of the Settlement Agreement. Evidence was presented at the hearing that the condominium had eventually been sold, but no evidence was submitted that it was the Government of Iran who took title to the property and then sold it. In the absence of evidence to the contrary, the Commission must, therefore, assume that Omran, not having received full payment due at the time the apartment was completed, eventually sold the apartment to someone else. *See CLAIM OF MALEK MOEZZI Against the Government of the Islamic Republic of Iran,* Claim No. IR- 1600, Decision No. IR-2376 (1994). At most, therefore, the claimant had a legal action or claim for breach of contract or specific performance against a third party, namely, Omran.

In summary, therefore, to the extent that any right held by claimant may have been transferred under Article VII of the Settlement Agreement, the Commission finds it to have been strictly contractual in nature. Accordingly, claimant is entitled to an award only for the transfer to the Iranian Government of his right for the return of his down payment, together with the penalties due under the contract for delay in the builder's completion of the condominium.

Based on its review of the evidence and information submitted, the Commission finds that as of June 22, 1990, the value of those rights was 4,951,160 Rials, consisting of his down payment of 3,856,160 Rials plus 1,095,000 Rials in penalties. Accordingly, the Commission finds the claimant entitled to an award in the principal amount of $3,395.86 in this portion of the claim, dating from June 22, 1990.[5]

In adjudicating the claims covered by the Settlement Agreement, the Commission has awarded interest at the rate of 10 percent simple interest per annum from the date the claim arose until the effective date of the Settlement Agreement. This is consistent with its practice in previous claims programs. *See, Claim of LYLE L. TOWNSEND Against the Islamic Republic of Iran,* Claim No. IR-0918, Decision No. IR-0146 (1992) *(citing decisions previously issued in claims against Yugoslavia and Poland).* In the present case, however, the claimant's claim did not arise until the effective date of the Settlement Agreement. Accordingly, the claimant is not entitled to interest as part of the award in this portion of the claim.

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[5] The Commission has determined that the free market exchange rate as of the date of the Settlement Agreement was 1458 rials to the dollar.

Appendix H

CONCLUSION

In summary, the Commission withdraws the denial of the claimant's claim set forth in the Proposed Decision, and enters the award set forth below, which will be certified to the Secretary of the Treasury for payment in accordance with subsection 501(b) of the Iran Claims Act. This constitutes the Commission's final determination in this claim.

AWARD

Claimant, MEHRDAD AZARMI, is entitled to an award in the principal amount of One Hundred Three Thousand Three Hundred Ninety-Five Dollars and Eighty-Six Cents ($103,395.86) plus interest on $100,000.00 from December 22, 1980 to June 22, 1990, in the amount of Ninety-Four Thousand Nine Hundred Dollars ($94,900.00), for a total award of One Hundred Ninety-Eight Thousand Two Hundred Ninety-Five Dollars and Eighty-Six Cents ($198,295.86).

Dated at Washington, DC and
entered as the Final
Decision of the Commission.

APPENDIX I

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
UNIVERSITY OF NORTHERN	}	
COLORADO	}	Claim No. IR-1651
	}	Decision No. IR-0053
	}	
Against the Government of the	}	
Islamic Republic of Iran	}	

PROPOSED DECISION

This claim in the amount of $766.00 against the Government of the Islamic Republic of Iran (hereinafter "Iran") is based on breach of contract arising out of the non-payment of tuition fees.

The record establishes that the claimant is and has been a United States national at all times relevant to this claim.

Under Title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub.L. 99-93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note); the "Iran Claims Act"), the Commission is authorized to

> receive and determine the validity and amounts of claims by nationals of the United States against Iran which are settled en bloc by the

> United States. In deciding such claims, the Commission shall apply, in the following order-
>
> (1) the terms of any settlement agreement;
>
> (2) the relevant provisions of the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981 [the "Algiers Accords"], giving consideration to interpretations thereof by the Iran-United States Claims Tribunal; and
>
> (3) applicable principles of international law, justice, and equity.

The en bloc settlement referred to above was accomplished in an agreement between the United States and Iranian governments which became effective on June 22, 1990 *(Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38,* Award No. 483 (1990); the "Settlement Agreement"). The agreement encompasses

> any and all claims of less than $250,000 each, which have been filed with the [Iran-United States Claims] Tribunal by the United States on behalf of U.S. nationals, which claims are included in Cases Nos. 10001 through 12785, and which are still pending, whether or not recategorized as Official Claims . . . and whether or not the amount of any of such claims is ultimately adjudicated to be more than $250,000[,] [and] claims of U.S. nationals for less than $250,000 which have been submitted

> to the United States Department of State but were not timely filed with the Tribunal as well as claims of U.S. nationals for less than $250,000 which have been either withdrawn by the Claimants or dismissed by the Tribunal for lack of jurisdiction

Settlement Agreement, Art. I subsec. A.

Article III of the Settlement Agreement provides for referral of the claims to the Foreign Claims Settlement Commission for adjudication, and further provides that

> [i]n adjudicating . . . claims, the Commission shall apply Tribunal precedent concerning both jurisdiction and merits, and shall take into account all issues including counterclaims and liens.

Settlement Agreement, Art. III subsec. (v).

BASIS OF CLAIM

The claimant herein, UNIVERSITY OF NORTHERN COLORADO (hereinafter "the University"), asserts that the claim consists of a debt incurred. pursuant to two contracts between it and Iran to provide educational services to two students designated by Iran.

The record indicates that in March 1978, the University was presented with a letter of authorization dated December 16, 1975, from the University of Tehran identifying an Iranian student, Mr. Ali Reza Shirani-Chaharsughi as the recipient of a scholarship from the University of Tehran and stating that his

registration fees and the University tuition fees would be paid by the University of Tehran. Based on this letter, the University admitted the student to its educational program. Mr. Ali Reza Shirani-Chaharsughi enrolled at the University in Spring 1978 and was a student until Fall 1979 during which time he worked as a graduate student in Business Administration. During this period, the University sent its bills to the University of Tehran and they were regularly paid until early 1979. The record indicates that the University's tuition fees for Spring 1979 were not paid by Iran. The fees incurred on behalf of Mr. Shirani-Chaharsughi amounted to $766.00.

Similarly, in May 1978, a letter of authorization was received by the University from the University of Tehran which certified that a Mr. Mohammad Haghighi had been awarded a scholarship. The letter instructed the University to send the tuition bills incurred by him to the University of Tehran for payment. Based on this letter, starting in Fall 1978, the University sent its tuition bills to the University of Tehran for payment. The record indicates that the University's tuition fees for Spring 1979 and Winter 1979 were not paid by Iran. The fees incurred on behalf of Mr. Haghighi amounted to $1,534.00.

The record establishes that after the University informed of the debt, the University of Tehran sent a check for $1534.00. The University credited $768 against Mr. Haghighi's account and $766 against Mr. Shirani-Chaharsughi's account. The record further reflects that the University of Tehran and Mr. Haghighi intended that the entire amount should have been credited against Mr. Haghighi's account and that payment fulfilled all of its debts with the University. Through extensive correspondence with the University of Tehran, the University made several unsuccessful attempts to collect the debt. The

University claims that regardless of how it was to allocate the $1534, the University of Teheran still owes $766 in fees.

DISCUSSION

Based on the facts demonstrated above, the Commission concludes that the above-mentioned letters constituted an offer by the University of Tehran to purchase services, in the form of educational instruction for the two Iranian students. It is clear from the letters that Iran undertook to pay for the services provided to the designated students. These letters were issued to the University to enable the students to obtain educational services from the University without their having to pay for them. The University accepted this offer when it permitted the students to enroll in its educational program without having to pay the tuition themselves. Under the circumstances, the Commission holds that a valid contract for the purchase and sale of services was concluded. Such a holding is in accordance with the Tribunal decision in *Iowa State University of Science and Technology v. Ministry of Culture and Higher Education, and the Islamic Republic of Iran*, Award No. 276-B72-2 (1986). Thus, the Commission concludes that the claimant is entitled to an award in compensation for Iran's breach of contract.

Based upon the entire record, the Commission finds that the claimant is entitled to an award in the principal amount of $766.00, the amount of the unpaid tuition fees.

In accordance with Tribunal precedents and recognized principles of international law, the Commission further concludes that claimant is entitled to interest as part of its award, amounting to 10 percent simple interest per annum from February 14, 1979, the billing date of Mr. Haghighi's unpaid

Winter Quarter, to June 22, 1990, the effective date of the Settlement Agreement. Accordingly, claimant is also entitled herein to an award of interest of 113.5 percent of its principal award, or $869.41.

Therefore, the Commission makes the following award, which will be certified to the Department of the Treasury for payment in accordance with section 501(b) of the Iran Claims Act.

AWARD

Claimant, UNIVERSITY OF NORTHERN COLORADO, is entitled to an award in the principal amount of Seven Hundred Sixty-Six Dollars ($766.00), plus interest from February 14, 1979 to June 22, 1990, in the amount of Eight Hundred Sixty Nine Dollars and Forty One Cents ($869.41), for a total award of One Thousand Six Hundred Thirty-Five Dollars and, Forty One Cents ($1,635.41).

APPENDIX J

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
JALIL FARDANESH	}	Claim No. IR-1261
	}	Decision No. IR-1377
Against the Government of the	}	
Islamic Republic of Iran	}	

Counsel for Claimant: Lewis M. Johnson, Esquire
Westberg & Johnson

Oral hearing held on November 15, 1993.

FINAL DECISION

This claim in the amount of $249,000.00 against the Government of the Islamic Republic of Iran ("the Iranian Government") is based upon the alleged expropriation of the claimant's real property by the Government of Iran. The claimant has submitted evidence showing, that he owned two pieces of real property in Iran; the first of these was a lot in Karaj, some eighteen miles west of Tehran, and the second was a lot located in the Gheytarieh region of Tehran. The claimant has asserted that, as a result of the wrongful actions of the Iranian Government, or, alternately, by operation of law under the Settlement Agreement, he was deprived of this property.

Appendix J

By Proposed Decision entered July 23, 1993, the Commission denied the claim in its entirety. The Commission found that the claimant had not established that the Government of Iran had actually taken the property. In addition, the Commission rejected the claimant's argument that the terms of the Settlement Agreement automatically effected a transfer of his property to the Government of Iran.

The claimant, through counsel, objected to the Commission's Proposed Decision, submitted an extensive brief in support of his position, and requested an oral hearing at which to present his case. An oral hearing was held on November 15, 1993, at which attorneys for the claimant presented arguments and testimony in support of the objection. Essentially, the claimant raised three arguments: first, that the Commission erred in requiring proof of an actual taking, when proof of a constructive taking should have been sufficient; second, that the Commission erred when it determined that the Settlement Agreement did not automatically transfer the claimant's property to Iran; and, finally, that the evidence submitted is sufficient to establish that the claimant's property was, in fact, taken by the Iranian Government.

I. Actual and Constructive Expropriations

There is simply nothing in the record to support the claimant's allegations that his property was physically taken by the Iranian Government at the time of the Islamic Revolution. As stated in the Proposed Decision, the most recent documents submitted by the claimant appear to indicate that, years after the effective date of the Algiers Accords, the claimant was still the owner of record of the properties in question.

Claimant asserts, however, that proof of an actual taking "is not required by the applicable law and Hague Tribunal precedents." The claimant contends that he

> does not have to establish that his property was actually taken over by Iran. Rather, he need only establish that Iran has taken action that has unduly delayed his effective enjoyment of those properties, or derived him of control of his properties for an extended period of time, or unreasonably interfered with the use, enjoyment, or disposal of the properties for more than a reasonable period of time.

Memorial in Opposition to Proposed Decision, p. 6.

The claimant's statement of the law concerning expropriation is quite correct. Indeed, the Commission's Proposed Decision expressly acknowledged that "actions by the Government of Iran affecting property rights may properly be the subject of claims, and a compensable deprivation of property may, in fact, occur without an actual change in the title." The Commission did not reject the claimant's claim for failure to establish an actual formal change in ownership of the claimant's property; rather, the Commission was "not persuaded that the claimant's property was expropriated or otherwise taken outright by the Iranian Government, *or that the claimant has been deprived of the use and benefit of that property through some other action, wrongful or otherwise, on the part of the Government of Iran* (emphasis added).

The claimant has argued that various regulations restricting the transfer of property, together with Iran's "direct involvement in the many incitements against the United States and U.S. nationals," constituted an effective expropriation of the claimant's properties. While the Commission agrees that the law recognizes the concept of "effective expropriation," the Commission remains unpersuaded that such an expropriation took place at any time prior to January 19, 1981, the date of the Algiers Accords.

The Commission has recognized that regulations restricting the transfer of property were in force, and might constitute one factor in determining whether property had, in fact, been taken. *See, Claims of VICTOR J. JAMAL et al. Against the Islamic Republic of Iran*, Claim Nos. IR-0820, IR-0826, IR-1126, IR-1224, Decision No. IR-1485 (1993). However, neither the Iran-United States Claims Tribunal nor the Commission has ever held that regulations restricting the sale of property by persons outside Iran constituted, *ipso facto,* an effective expropriation of any property, and the Commission declines to adopt any such holding, at this time.

Claimant's argument that Iran's anti-Americanism constituted an effective taking of his property has already been raised at the Iran-United States Claims Tribunal. While the Tribunal, in several cases, has discussed the issue of state-endorsed anti-Americanism in Iran, it has never held that anti-Americanism itself gave rise to any general impairment of the property rights of American citizens. *See, e.g., Kenneth P. Yeager v. The Islamic Republic of Iran*, Award No. 324-10199-1 p. 23 (1987); *Jack Rankin v. The Islamic Republic of Iran*, Award No. 326-10913-2 pp. 17-18 (1987).

Moreover, even if, as a rule, anti-Americanism were to constitute wilful interference by the Iranian Government with the property rights of claimants, it is not clear that the rule would apply in the present case. In an affidavit dated May 5, 1993, the claimant stated that, in 1968, he advised the Iranian Ministries of Foreign Affairs and of the Interior that he wished to renounce his Iranian nationality. He was discouraged from doing so, however, for the reason that "the process was lengthy and very difficult," and that "anyone born an Iranian remains so for life." Accordingly, notwithstanding any anti-American policies enforced by the Iranian Government, it would appear that the Iranian Government considered the claimant an Iranian, rather than an American.

Finally, the Commission notes that, at the hearing, the claimant testified that part of his problem had been that money could not be transferred out of Iran. The Commission takes administrative notice of the fact that, even today, money can be transferred Out of Iran. The difficulty is one of extremely unfavorable exchange rates. If, in fact, this was claimant's concern, then the real issue is not actual or constructive expropriation, but rather losses sustained due to market conditions. However, both the Commission and the Tribunal have held that the Government of Iran cannot be held liable for unfavorable market conditions resulting from the Revolution. *Claim of ROBERT W. BARKER and BERNICE M. BARKER Against the Islamic Republic of Iran*, Claim No. IR-1213, Decision No. IR-1289 (1993); *see also, Howard, Needles, Tammen & Bergendoff v. The Islamic Republic of Iran*, Award No. 244-68-2 at p. 54 (1986). Thus, to the extent that the present claim arises from the impracticability of repatriating a satisfactory sum of money

after the sale of the claimant's property in Iran, the Commission has no choice but to deny it.

II. The Settlement Agreement

Claimant's second argument is that Article VII of the Settlement Agreement has deprived him of the use of his property, and has quitclaimed it to Iran. As reflected in recent decisions, the Commission has now adopted this view.

As discussed in those decisions, one of the stated purposes of the Settlement Agreement was to"'transfer to the Islamic Republic of Iran property of the Claimants as specified in Article VII." Article VII of the Settlement Agreement provides that

> [u]pon the issuance of the Award on Agreed Terms, and in contemplation of the payment of the Settlement Amount, all of the Claimants' tangible and intangible assets, rights, properties and real estate, of any kind, located in the Islamic Republic of Iran, asserted in the Claims of less than $250,000... shall be quitclaimed and transferred unconditionally, irrevocably and without any right to recourse, "as is and where is," to the Islamic Republic of Iran.

Article III(v) of the Settlement Agreement requires the Commission, in its adjudication of the Small Claims, to

> take into account, as appropriate, any transfers under Article VII of this Agreement, without

> in any manner entailing any liability for the Islamic Republic of Iran...

The use of the words "as appropriate" allows the Commission some discretion in determining whether or not an award is warranted under the terms of Article VII. In the present case, the record reflects that, from the time the claimant left Iran, the property remained in his name. The claimant has also shown that, subsequent to the Settlement Agreement, he was unable to access his property. Accordingly, the Commission finds that, by operation of the Settlement Agreement, the claimant's real property was transferred to the Government of Iran. The claimant is therefore entitled to an award for the value of this property as of June 22, 1990, the effective date of the Settlement Agreement.

Regarding the valuation of the properties, the Commission has considered the appraisals submitted by the claimant's expert, as well as the valuations determined in other cases involving real property situated close to that of the claimant. *See, e.g., Claim of NOURIEL ARYEH, et al. Against the Islamic Republic of Iran*, Claim Nos. IR-1184, IR-1185, IR-1189, IR-1240, Decision No. IR-2365 (1994). Based on the evidence in the record, the Commission finds that the value of the two properties together would have been in excess of $249,999.99, the Commission's jurisdictional limit. The claimant having reduced his claim to fall within that limit, the Commission finds that the claimant is entitled to an award in the principal amount of $249,000.00, the asserted amount of his claim. This award shall date from June 22, 1990, the effective date of the Settlement Agreement.

In adjudicating the claims covered by the Settlement Agreement, the Commission has awarded interest at the rate of 10 percent simple interest per annum from the date the claim arose until the effective date of the Settlement Agreement. This is consistent with its practice in previous claims programs. *See, Claim of LYLE L. TOWNSEND Against the Islamic Republic of Iran*, Claim No. IR-0918, Decision No. IR-0146 (1992) (*citing decisions previously issued in claims against Yugoslavia and Poland*). In the present case, however, the claimant's claim did not arise until the, effective date of the Settlement Agreement. Accordingly, the claimant is not entitled to interest as part of his award.

For the reasons stated above, the Commission withdraws the denial of the claimant's claim as set forth in the Proposed Decision, and instead makes the following award, which will be certified to the Department of the Treasury for payment in accordance with subsection 501(b) of the Iran Claims Act. This constitutes the Commission's final determination in this claim.

AWARD

Claimant, JALIL FARDANESH, is entitled to an award in the principal amount of Two Hundred Forty-Nine Thousand Dollars ($249,000.00).

Dated at Washington, DC
and entered as the Final
Decision of the Commission.